United States Court of Appeals

for the Second Circuit

SUPPLEMENTAL APPENDIX

76-7578

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P/S

In The

United States Court of Appeals

For The Second Circuit

EDWARD BRUCKER and DANIEL R. KAPLAN, as Trustees under the Trust Agreement dated November 15, 1968, made by WILTRUD E. GADBOYS, as Grantor, CECIL G. HUSKEY, E.T. STRATTON and NORTE & CO., a partnership composed of JOSEPH C. GALDI and RITA D. GALDI,

Plaintiffs-Appellees,

vs.

THYSSEN-BORNEMISZA EUROPE N.V., THYSSEN-BORNEMISZA, INC., THYSSEN-BORNEMISZA

(Continued on Reverse)

On Appeal from the United States District Court for the Southern District of New York.

UNITED STATES COURT OF APPEALS
FILED
FEB 15 1977
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SECOND CIRCUIT

SUPPLEMENTAL APPENDIX

EDWIN P. ROME
SAMUEL R. SIMON
MORTON P. ROME
Attorneys for Appellants
Four Penn Center Plaza
Philadelphia, Pennsylvania 19103
(215) 569-3700

Of Counsel:

BLANK, ROME, KLAUS & COMISKY
Four Penn Center Plaza
Philadelphia, Pennsylvania 19103
(215) 569-3700

BRUCE A. HECKER
IRA POSTEL
SHEA, GOULD, CLIMENKO & CASEY
330 Madison Avenue
New York, New York 10017
(212) 661-3200

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Defendants-Appellees.

WILLIAM B. WEINBERGER,

Plaintiff-Appellee,

vs.

RICHARD J. POWERS, JAMES M. FLACK, ANDREW KALMAN, PAUL W. McALLISTER, JOHN E. O'SULLIVAN, JAMES E. ROBISON, ROBERT M. SCHWARZENBACH, MARSHALL F. SMITH, JAMES G. FERGUSON, THYSSEN-BORNEMISZA, INC. and INDIAN HEAD INC.,

Defendants-Appellees.

SHAMROCK CORPORATION, individually, and on behalf of all holders of Common Stock and Warrants of Indian Head Inc., similarly situated,

vs.

INDIAN HEAD INC.; THYSSEN-BORNEMISZA GROUP N.V.; THYSSEN-BORNEMISZA, INC.; WHITE, WELD & CO. INCORPORATED; RICHARD J. POWERS; JAMES E. ROBISON; HERBERT E. BACHRACH; GERALD B. HUISKAMP; L. EMERY KATZENBACH; MARSHALL F. SMITH; H.H. THYSSEN-BORNEMISZA; R.L. GENILLARD; THYSSEN-BORNEMISZA HOLDINGS, INC. and CHEMICAL BANK,

Defendants-Appellees.

APPEAL OF MORTON P. ROME AND MARJORIE T. ROME, TRUSTEES UNDER TRUST AGREEMENT MADE NOVEMBER 22, 1954, FOR THE BENEFIT OF SALLY P. ROME,

Objectors-Appellants.

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DOCKET ENTRIES

75 Civ. 1736 SHAMROCK CORP. ET AL VS INDIAN HEAD INC. ET AL STEWART

Date	NR.	Proceeding
04-09-75	1	Filed complaint and issued summons.
04-11-75	2	Filed Certificate of mailing complaint and summons by the Clerk by registered mail to Thyssen-Bornemisza Group N.V. #612055 on 4-11-75 (ret. receipt received) Prof. E.M. Meijerslan 1 Amstelveen, The Netherlands Herbert E. Bachrach C/O Thyssen-Bornemisza Group N.V. #612056 on 11-75 Prof. E.M. Meijerslan 1 Amstelveen, The Netherlands Mr. Gerard B. Huiskamp C/O E.M. Meijerallan 1 Amstelveen, The Netherlands #612057 (Ret. receipt received) H.H. Thyssen-Bornemisza Villa Favorita Castagnola-Lugano Switzerland #612058 (ret. receipt received) 11/18/75 R.L. Genillard #612059 c/o Clariden Finanz 1 Quai Du Mont Blanc 1211 Geneva 1, Switzerland
05-19-75	3	Filed stip. and order ext. defts. time to answer the complaint to 7-1-75 and the remaining defts shall have until 7-1-75 or the date provided by law. to answer and that the pltf. shall have until 60 days after date of service by defts for a determination as to whether the action is to be maintained as a class action---Stewart, J.
05-13-75	4	Filed summons with marshal's return saved--White, Weld & Co. by Robert I. Kleinberg on 5-2-75 Emery Katzenbach by Robert I. Kleinberg on 5-2-75 Thyssen-Bornemisza Inc. by H. Blumberg on 4-14-74 Indian Head Inc. by Ralph S. Brown on 4-17-75 Marshal S. Smith by M. Cutter on 4-17-75 James E. Robinson by M. Cutter on 4-17-75 Richard J. Powers by P. Sabatello on 4-17-75
06-03-75	5	Filed defts. Thyssen-Bornemisza Group N.V. et al notice of motion for an order dismissing the complaint ret. 6-12-75

Docket Entries

06-03-75	6	Filed defts. Thyssen-Bornemisza Group N.V. memorandum in support of above motion to dismiss the complaint
06-18-75	7	Filed stip. and order that defts. Indian Head, Inc. et al Join defts Thyssen-Borneis et al in their motion dated 6-2-75. defts. time to respond to the complaint is ext. until twenty days following final disposition motion and ret. date of defts motion to rule 9(b) is ajd. to 7-3-75 any response by pltf. to motion shall be served by hand on defts.--Stewart,J.
06-27-75	8	Filed pltf's memorandum opposing motion by defts to dismiss complaint under rule 9(b)
07-08-75	9	Filed Reply memorandum in support of defts motion to dismiss the complaint for failure to allege fraud with particularity as required by rule 9(b)
07-14-75	10	Filed stip. and order that deft. Thyssen-Bornemisza Group N.V. has changed his name to Thyssen-Bornemisza Europe N.V.--Stewart, J.
10-09-75	11	Filed Memorandum #43228 Pltf. brought a class action complaint against defts. Indian Head Inc., et al. Defts have moved, pursuant to rule 9(b) to dismiss the complaint motion is denied--Stewart, J. m/n
10-29-75	12	Filed stip. and order ext. defts time to answer to 11-19-75---Stewart, J.
11-25-75	13	Filed stip. and order ext. all defts time to answer the complaint to 12-15-75--Stewart, J.
12-12-75	14	Filed stip. and order that the time of all defts to answer to the complaint is ext. 1-1-76. and pltf's time to oppose any motion against the complaint is ext. to 60 days after service of motions--Gagliardi, J.
02-02-76	15	Filed deft's Thyssen-Bornemisza & Genillard affdvt. and notice of motion for an order dismissing the complaint for lack of personal jurisdiction etc. as indicated. ret. on March 15, 1976 at time and place to be set by court.
02-02-76	16	Filed defts' memorandum in support of the motion by Individual defts' Thyssen-Bornemisza, ~~Genillard and~~ Katzenbach for dismissal for lack of personal jurisdiction or for summary judgment.

Docket Entries

02-02-76	17	Filed defts' joint memorandum in support of defts' motion for dismissal, or summary judgment.
02-02-76		Filed defts' affdvt. and notice of motion for judgment pursuant to Rule 12(b) (6), Fed R. Civ. P. dismissing the complaint etc. as indicated. ret. on March 15, 1976 at 10 a.m. rm 2602.
02-02-76	19	Filed affdvt's of (Powers, Bachrach, Genillard, H.H. Thyssen-Bornemisza & Katzenbach) and exhibits in support of defts' motions for dismissal or summary judgment.
02-02-76	20	Filed stip. and order ext. defts time to answer to 2-2-76 and that pltfs time to oppose any motions against the complaint to include 60 days after service and filing of any such motions---Stewart, J.
03-04-76	21	Filed pltf amended complaint
03-03-76	22	Filed stip. and order ext. the time schedule with respect to the service of opposition and reply papers and the oral argument of defts motion to dismiss pltf's complaint to pltf's papers in opposition to be served--4-15-76 defts reply papers to be served --4-26-76 and return date of motion to 5-3-76---Stewart. J.
03-18-76	23	Filed pltf Weinberger memorandum in support of motion for consolidation and other relief.
03-18-76	24	Filed pltf. Weinberger affdvt. and notice of motion for an order consolidating the three action pursuant to rule 42(a) ret. 4-1-76.
03-05-76	--	Filed stip. and order that the meeting scheduled for April 5, 1976 in Chambers to report on the progress of settlement negotiations is postponed until April 19, 1976 and that answering papers of pltf. motion seeking consolidation and other relief is ext. to 4-30-76 and the ret. date for said motion is set for 5-6-76---Stewart, J. (place in 74CIV575)
05-19-76	25	Filed stip. and order ext defts. time to answer on 6-1-76
05-17-76	--	Filed transcript of record of proceedings dated 3-4-76.
05-19-76	--	Filed stip. and order that the time within which to serve answering papers to pltf. Weinberger's motion seeking consolidation to 6-11-76 ---Stewart, J. (place in 75 civ229)
06-04-76	26	Filed stip. and order ext. defts. time to answer to 7-1-76, deft. Thyssen-Bornemisza Group N.V. time to answer ext. to 8-15-76---Stewart, J.

Docket Entries

7-1-76	27	Filed stip. and order that the time of deft. of Thyssen-Bornemisza Group to interrog. is ext. to July 1, 1976. So ordered, Stewart, J.
07-07-76	28	Filed stip. and order defts. time to answer to 9-3-76 Stewart, J.
07-09-76	29	Filed stip. and order ext. deft. Thyssen-Bornemisza Group N.V. time to answer to the interrog. of pltf. to 9-23-76---Stewart, J.

SUMMONS IN A CIVIL ACTION SUMMONS (Filed April 9, 1975) (Formerly D.C. Form No.45a Rev. (6-49)) CIV. 1 (2-64) 5sa

United States District Court

FOR THE

SOUTHERN DISTRICT OF NEW YORK

ecs

CIVIL ACTION FILE NO. 75 Civ 1736

SHAMROCK CORPORATION, Individually and on behalf of all holders of Warrants of Indian Head Inc., similarly situated,

Plaintiff,

v.

INDIAN HEAD INC.; THYSSEN-BORNEMISZA GROUP N.V.; THYSSEN-BORNEMISZA INC.; WHITE, WELD & CO., INCORPORATED; RICHARD J. POWERS; JAMES E. ROBISON; HERBERT E. BACHRACH; GERARD B. HUISKAMP; L. EMERY KATZENBACH; MARSHALL F. SMITH; H. H. THYSSEN-BORNEMISZA; and R. L. GENILLARD,

Defendants.

SUMMONS

To the above named Defendants:

You are hereby summoned and required to serve upon Wolf Haldenstein Adler Freeman Herz & Frank

plaintiff's attorneys, whose address is 270 Madison Avenue, New York, New York 10016 an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

H Raymond F. Burghardt
Clerk of Court.

Deputy Clerk.

Date: April 9, 1975

[Seal of Court]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

SHAMROCK CORPORATION, Individually, and on behalf of all holders of Warrants of Indian Head Inc., similarly situated,

Plaintiff,

-against-

INDIAN HEAD INC.; THYSSEN-BORNEMISZA GROUP N.V.; THYSSEN-BORNEMISZA INC.; WHITE, WELD & CO., INCORPORATED; RICHARD J. POWERS; JAMES E. ROBISON; HERBERT E. BACHRACH; GERARD B. HUISKAMP; L. EMERY KATZENBACH; MARSHALL F. SMITH; H. H. THYSSEN-BORNEMISZA; and R. L. GENILLARD,

Defendants.

COMPLAINT

CLASS ACTION

----------x

Plaintiff, by its attorneys, WOLF HALDENSTEIN ADLER FREEMAN HERZ & FRANK, alleges on information and belief, except as to paragraph 4 which it alleges upon knowledge:

JURISDICTION

1. This action arises under Sections 10(b) and 14(e) of the Securities Exchange Act of 1934 [15 U.S.C. 78(j) and 78(e)], Rule 10b-5 promulgated by the Securities and Exchange Commission and principles of common law.

2. This Court has jurisdiction of the action by virtue of Section 27 of the Securities Exchange Act of 1934 [15 U.S.C. 78aa] and pendant jurisdiction.

3. The acts alleged herein occurred in substantial part within the Southern District of New York.

4. Plaintiff is a Virginia corporation. At all times hereinafter mentioned it has been the holder of Warrants to purchase 6,200 shares of the $1.00 par value Common Stock of Indian Head Inc. (respectively, "Warrants" and "Common Stock"). The Warrants are exercisable through May 15, 1990. The exercise price of the Warrants is $25.00 per share of Common Stock through May 15, 1975 and increases by $5.00 on that date and every five years thereafter through May 15, 1985.

5. Defendant Indian Head Inc. ("Indian Head"), the issuer of the securities underlying this action is a Delaware corporation. Its principal place of business is in New York, New York.

6. Defendant Thyssen-Bornemisza Group N.V. ("TBG") is a Netherlands company limited by shares. Its principal office is in Amstelveen, The Netherlands. It is a holding company which made two tender offers for Indian Head securities, the first for Common Stock and the second for Common Stock and Warrants which, as hereinafter alleged, were made by the use of untrue and misleading statements of material facts and by the omission of material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

7. Defendant Thyssen-Bornemisza Inc. ("TBI") is a Maryland corporation. It is a wholly owned subsidiary of TBG. It acquired from TBG and now owns approximately 90% of

Indian Head's outstanding Common Stock.

8. Defendant H. H. Thyssen-Bornemisza is an individual residing in Switzerland. He controls TBG through ownership of Familienstiftung Kaszony, a Swiss private foundation which owns all the shares of N.V. Hollandsch-Amerikaansche Beleggingsmaatschappij-Holland American Investment Corporation, a Netherlands company, whose principal business activity is holding all of the shares of TBG. He was at all times hereinafter mentioned Chairman of the Supervisory Board of TBG.

9. Defendant White, Weld & Co., Incorporated ("White, Weld") is a corporation whose principal office is in New York, New York. It is a broker-dealer in securities and a member firm of the New York Stock Exchange and the American Stock Exchange.

10. Defendant R. L. Genillard was at all times hereinafter mentioned the Deputy Chairman of the Supervisory Board of TBG, and until approximately July, 1974, a Director of White, Weld. Since approximately July, 1974, he has been Vice Chairman of the Board of White, Weld Holdings, Inc., the parent of White, Weld.

11. Defendant L. Emery Katzenbach was at all times hereinafter mentioned Chairman and a member of the Board of White, Weld, and between approximately 1971 and March, 1974 he was a member of the Board of Directors of Indian Head.

12. Defendant James E. Robison has been a member of the Board of Directors and Executive Committee, and Chairman of the Finance Committee, of Indian Head at all times hereinafter mentioned. In addition, he has been a member of the Supervisory Board of TBG since approximately October, 1973.

13. Defendants Herbert E. Bachrach and Gerard B. Huiskamp have been members of the Board of Directors of Indian Head since approximately October, 1973. At all times hereinafter mentioned they have been members of the Board of Management of TBG. They have been officers and directors of TBI since approximately September 11, 1973.

14. Defendant Richard J. Powers has been Chairman of the Board of Directors of Indian Head at all times hereinafter mentioned.

15. Defendant Marshall F. Smith has been President and Chief Operating Officer of Indian Head and a member of its Board of Directors since approximately February 26, 1974.

CLASS ACTION

16. Each claim herein is brought as a class action pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure. The Class consists of all persons who owned Warrants at the time of the wrongs complained of herein, except the defendants, persons affiliated and associated with the defendants and members of the immediate families of each of the individual defendants.

17. Plaintiff is a member of the Class. Its claims are typical of the claims of all Class members. It will

fairly and adequately protect the interests of the Class.

18. The members of the Class are so numerous, approximately 1,000, that joinder of all members if impracticable.

19. A Class action is superior to other available methods for the fair and efficient adjudication of this controversy. There are questions of law and fact involved herein which are common to the Class and which predominate over any questions affecting individual members of the Class. The common questions include:

(a) Whether TBG's tender offer for Common Stock dated September 27, 1973, contained untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading;

(b) Whether TBG's tender offer for Common Stock and Warrants, dated July 12, 1974, contained untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading;

(c) Whether the defendants committed fraudulent, deceptive or manipulative acts or practices in connection with either or both tender offers;

(d) Whether Indian Head and the individual defendants who were directors of Indian Head

breached a duty owed to the holders of Warrants to not engage in transactions which substantially impaired the value of the Warrants;

(e) Whether defendants TBG, H. H. Thyssen-Bornemisza and R. L. Genillard induced or aided and abetted Indian Head and the individual defendants who were directors of Indian Head in the aforementioned breach of duty;

(f) Whether defendants TBG, H. H. Thyssen-Bornemisza and R. L. Genillard, as the persons controlling Indian Head after October 10, 1973, breached a duty owed to the holders of Warrants to not engage in transactions which substantially impaired the value of the Warrants;

(g) Whether the tender offers made by TBG resulted in the substantial impairment of the value of the Warrants;

(h) The nature of the relief to be granted.

20. No other litigation concerning this controversy has been commenced by or against members of the Class.

21. No particular difficulties are likely to be encountered in the management of this action as a class action.

22. This is the appropriate forum in which to concentrate the litigation of the claims of members of the Class because Indian Head and its pertinent books and records are located within the Southern District of New York and a substantial number of the individual defendants and persons who will be called as witnesses reside or engage in business in the Southern District of New York.

FIRST COUNT

Violation of Sections 10(b) and 14(e) of the Securities Exchange Act of 1934 and Rule 10b-5 of the Securities and Exchange Commission

23. On or about September 27, 1973 there were outstanding 5,427,335 shares of Common Stock and 399,355 Warrants.

24. The Common Stock was on that date and for several years prior thereto listed and traded on the New York Stock Exchange.

25. The Warrants were on that date and for several years prior thereto listed and traded on the American Stock Exchange.

26. On or about September 27, 1973, through the use of the mails and other means or instrumentalities of interstate commerce, TBG made an offer to the holders of the Common Stock to purchase a minimum of 750,000 and a maximum

of 1,100,000 shares of Common Stock at a price of $27.00 per share ("First Tender Offer").

27. Immediately prior to the commencement of the First Tender Offer the Common Stock traded on the New York Stock Exchange at a price of approximately $25.00 per share and the Warrants traded on the American Stock Exchange at a price of approximately $8.00 per Warrant.

28. Prior to the First Tender Offer and in anticipation thereof, on or about September 19, 1973, TBG and Indian Head entered into a Memorandum of Understanding which provided, among other things, that:

(a) Indian Head would cooperate with TBG in TBG's making a tender offer for Common Stock at $27.00 per share;

(b) TBG reserved the right to reject all tenders if less than 750,000 shares of Common Stock were tendered;

(c) All shares tendered in excess of 1,100,000 shares would be rejected on a pro rata basis;

(d) If TBG purchased at least 750,000 shares of Common Stock from tendering shareholders, Indian Head would sell to TBG and TBG would purchase from Indian Head an additional 750,000 shares of Common Stock at $27.00 per share;

(e) Two nominees of TBG would be elected to the Indian Head Board of Directors, one of whom would become a member of Indian Head's Executive Committee and Finance Committee;

(f) Indian Head would invite one or more guests from TBG to be present at all Indian Head Board of Directors meetings, Executive Committee meetings and Finance Committee meetings, to observe and participate in discussions, but without voting rights.

29. The First Tender Offer contained the following statements of material facts which were made for the purpose of inducing the holders of the Common Stock to tender their shares:

(a) Page 1: "Thyssen-Bornemisza Group N.V., a Netherlands Company limited by shares ("TBG"), hereby offers to purchase a minimum of 750,000 shares and a maximum of 1,100,000 shares of Common Stock, $1.00 par value (the "Common Stock"), of Indian Head Inc., a Delaware corporation ("Indian Head"), at $27.00 per share (net to the seller) in cash, upon the terms and conditions set forth in this Offer and in the accompanying Letter of Tender.

(b) "1. Number of Shares. If 750,000 or more shares of Common Stock are tendered, and remain tendered, TBG will purchase all of such shares properly tendered up to 1,100,000 shares of Common Stock, and may extend this Offer. If fewer than 750,000 shares of Common Stock are tendered, and remain tendered, TBG reserves the right, at its option, to elect (a) to extend this Offer from time to time, during which extension all shares of Common Stock previously tendered and not withdrawn will remain subject to this Offer and may be purchased by TBG, (b) to purchase all shares of Common Stock validly tendered pursuant to this Offer and to extend this Offer, or (c) to terminate this Offer and

purchase none or all of the shares of Common Stock duly tendered. If more than 1,100,000 shares of Common Stock are tendered, and remain tendered, during the initial period, purchases will be made from all tendering stockholders, pro rata according to the number of shares tendered by each (with appropriate adjustments to avoid the purchase of fractional shares). If this Offer is extended by TBG and TBG purchases shares of Common Stock pursuant to this Offer, TBG may purchase shares tendered during such extension on a first-come, first-served basis.

(c) "9. Purpose of this Offer. TBG intends through the Offer and its agreement with Indian Head referred to below to acquire between 26% and 32% of the issued and outstanding shares of the Common Stock. Indian Head has agreed that immediately upon purchase of shares pursuant to the Offer, two nominees of TBG will be elected to the Indian Head Board of Directors, one of whom will become a member of the Executive Committee and Finance Committee of the Board of Directors of Indian Head. See Item 12.

"TBG does not intend to be involved directly in the day to day business operations and management of Indian Head. On the other hand, TBG does not intend to be merely a passive investor but rather, as a stockholder and through its representation on the Board of Directors and Committees of the Board, it intends to participate and have a significant voice in the formulation of policy and business strategy.

"TBG hopes to facilitate business ventures which Indian Head may wish to undertake by offering to make additional investments in Indian Head or otherwise to participate in such ventures. See Item 12.

"Except to the extent described above, it is not the present intention of TBG to attempt to acquire control of Indian Head by means of these transactions, nor in its capacity as a major stockholder of Indian Head does TBG now have or intend to develop plans or proposals to liquidate Indian Head, to sell its assets or to merge it with any other person or to make any change in its business, management or corporate structure. TBG does intend to vote its shares in a manner which is intended to benefit all of the stockholders of Indian Head, including TBG."

(d) "11. Source and Amount of Funds. The amount of funds to be used in making purchases of the Common Stock pursuant to this Offer (assuming 1,100,000 shares are purchased) is $29,700,000. The estimated costs in connection with the Offer are $1,100,000. In addition, TBG will pay Indian Head $20,250,000 for the purchase of 750,000 shares of Common Stock directly from Indian Head pursuant to the Agreement referred to in Item 12 below. TBG will pay White, Weld & Co. Incorporated ("White, Weld") a fee of $405,000 for its services in arranging said purchase and for other investment banking services. See also Item 14. Of this amount, all of such funds are to be supplied by TBG out of its general funds."

(e) "12. Position of Indian Head Management and Agreements with Respect to Common Stock. On September 19, 1973 Indian Head and TBG entered into a Memorandum of Understanding (the "Agreement") providing that Indian Head would cooperate with TBG in making the Offer. Indian Head has directed the transfer agent for the Common Stock to make available to TBG its stockholder list. However, Indian Head has informed TBG that the Board of Directors and management of Indian Head are not making any recommendation to the stockholders as to whether or not they should tender shares under this Offer. The members of the Board own, together with members of their immediate families, approximately 850,000 shares of Common Stock and have indicated that they intend, at the present time, to tender in the aggregate not more than 50,000 of such shares.

"The parties agreed that if TBG purchases not less than 750,000 shares pursuant to the Offer, Indian Head will sell, and TBG will purchase, 750,000 additional shares from Indian Head at $27.00 per share. Indian Head also agreed that immediately upon purchase of shares pursuant to this Offer two nominees of TBG will be elected to the Indian Head Board of Directors, one of whom will be a member of the Executive Committee and Finace Committee of the Board of Directors.

"TBG agreed to keep Indian Head informed of any plans for public offerings of its shares or shares of its subsidiaries and affiliates and to give Indian Head an opportunity to consider participation in such offerings, and to give Indian Head a right of first refusal with

respect to any business venture or investment that TBG contemplates in the United States and with respect to any subsequent disposition by TBG of its Indian Head shares.

"In addition, it is understood that J. E. Robison, Chairman of the Finance Committee of Indian Head, will be invited to join the Supervisory Board of TBG.

"The Agreement was approved by the Board of Directors of Indian Head on September 25, 1973. The Agreement contemplates, and it is expected, that a supplementary agreement with respect to certain legal matters may be entered into by the parties. It is contemplated that such supplementary agreement will provide that Indian Head will not be obligated to sell shares to TBG if (1) there shall be any pending or expressly threatened action, suit or proceeding before any court or governmental authority relating to the said sale or (2) the purchase of 750,000 shares pursuant to this Offer shall not have taken place before December 1, 1973."

30. The statements in the First Tender Offer were untrue and misleading in that:

(a) TBG intended to acquire control of Indian Head by means of the First Tender Offer, both by itself and as part of a scheme to do so; and

(b) The funds requisite to effect the First Tender Offer and the purchase of 750,000 shares of Common Stock were to be supplied through the mechanism of a sale of the shares acquired by TBG to TBI, which had been incorporated on September 11, 1973, and ultimately by borrowings from banks.

31. The First Tender Offer omitted to state the following material facts necessary in order to make the statements made, in the light of the circumstances under which they

were made, not misleading:

(a) The 750,000 shares to be sold by Indian Head to TBG upon consummation of the First Tender Offer had no business purpose but was part of the scheme whereby control of Indian Head would be transferred to TBG.

(b) TBG would be in a position, following the consummation of the First Tender Offer, to exercise control over Indian Head.

(c) TBG intended to acquire greater control of Indian Head through transactions other than the transactions described in the First Tender Offer, to wit, a Second Tender Offer.

(d) TBG and Indian Head intended the supplementary agreement (hereinafter the "Supplement to the Memorandum of Understanding"), referred to in Item 12 of the First Tender Offer, quoted in paragraph 29, to provide more than the inconsequential matters referred to in Item 12, to wit, that Indian Head would be committed to register the Common Stock owned by TBG under the Securities Act of 1933 without consideration to Indian Head.

(e) An effect of the First Tender Offer would be the substantial impairment of the value of the Warrants.

(f) TBG intended to impair the value of the Warrants by eliminating the New York Stock

(g) TBG intended to acquire all shares tendered without regard to the ceiling of 1,100,000 shares stated in its offer.

32. At the time the First Tender Offer was made the defendants knew that it contained statements which were untrue and misleading and omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

33. Pursuant to the First Tender Offer TBG acquired 1,213,619 shares of Common Stock, approximately 113,619 shares, or more than 10%, in excess of the amount it had stated it would purchase.

34. The First Tender Offer and the acquisition by TBG of 1,213,619 shares of Common Stock was one step in a series of fraudulent, deceptive and manipulative transactions intended by the defendants to transfer control of Indian Head to TBG and thereby to defendant H. H. Thyssen-Bornemisza with the intent of wrongfully impairing the rights of the holders of the Warrants.

35. On October 24, 1973 Indian Head issued and sold 750,000 shares of its Common Stock to TBG at a price of $27.00 per share pursuant to the Memorandum of Understanding.

36. The sale of 750,000 shares had no business purpose but was one step in the series of fraudulent, deceptive and manipulative transactions intended by TBG, Indian Head and the individual defendants to transfer control of Indian Head

to TBG and thereby to defendant H. H. Thyssen-Bornemisza with the intent of wrongfully impairing the rights of the holders of the Warrants.

37. In connection with the First Tender Offer, White, Weld acted as dealer-manager for TBG. In addition, White, Weld arranged the sale referred to in paragraph 35. It was wrongfully paid compensation by TBG for both actions.

38. At the time that White, Weld acted as dealer-manager of the First Tender Offer and arranged the sale of 750,000 shares by Indian Head to TBG, defendant L. Emery Katzenbach was a director of Indian Head and a director and Chairman of the Board of White, Weld and defendant R. L. Genillard was a member of the Supervisory Board of TBG and a director of White, Weld.

39. On or about October 24, 1973, Indian Head and TBG entered into the Supplement to the Memorandum of Understanding.

40. Pursuant to the Supplement to the Memorandum of Understanding, Indian Head agreed, among other things, without consideration to Indian Head, to file registration statements under the Securities Act of 1933 with respect to all shares of Common Stock owned by TBG.

41. On or about July 12, 1974, through the use of the mails and other means or instrumentalities of interstate commerce, TBG made an offer, as amended and extended on August 2, 1974, to purchase all outstanding shares of Common

Stock at a price of $27.00 per share and all outstanding Warrants at $2.25 per Warrant ("Second Tender Offer").

42. Immediately prior to the commencement of the Second Tender Offer the Common Stock traded on the New York Stock Exchange at a price of approximately $23.00 per share and the Warrants traded on the American Stock Exchange at a price of approximately $4.50 per Warrant.

43. The Second Tender Offer contained the following statement of a material fact which was made for the purpose of inducing the holders of the Common Stock to tender their shares:

> "11. Source and Amount of Funds. The amount of funds to be used in making purchases of the Common Stock and Warrants pursuant to this Offer (assuming all outstanding shares of Common Stock not presently owned by TBG and all outstanding Warrants are purchased and assuming no shares of Common Stock resulting from the conversion of the Company's Series A Preferred Stock and Convertible Subordinated Debentures are purchased) is $105,121,777, excluding fees and expenses. In addition, a maximum of approximately $910,000 may be payable to holders of employee stock options pursuant to the offer described in Paragraph 17. Up to a maximum of $50,000,000 of such funds are to be supplied by long term borrowings pursuant to a long term borrowing facility in the form of a 7-year multi-currency revolving credit agreement dated December 19, 1973 with The Chase Manhattan Bank, N.A. and fourteen other banks located outside the United States. Under the agreement, borrowings are unsecured and are made at floating interest rates from 3/4 to 7/8 of 1% above the London interbank offered rate quoted in the London Eurocurrency Market. The remaining portion of the required fu ls

will be supplied by TBG out of its general funds, which consist of cash, overdraft facilities and unsecured short term borrowings used for working capital purposes. TBG expects to continue to make use of these facilities and borrowings for working capital purposes in the future."

44. The aforesaid statement was untrue and misleading in that all the funds to be used by TBG to make the purchases under the Second Tender Offer were to be supplied through the mechanism of a sale of the shares acquired by TBG to TBI and ultimately by borrowings from banks.

45. The Second Tender Offer omitted to state the following material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading:

(a) The price at which TBG offered to purchase the Warrants was not based upon a fair assessment of the value of the Warrants, but was fixed arbitrarily by TBG without reference to the fair value of the Warrants at a price less than the fair value thereof.

(b) TBG would partially finance the purchase contemplated by the Second Tender Offer by a transfer of funds from Indian Head to TBI.

(c) TBG intended to impair the value of the Warrants by eliminating the New York Stock Exchange market for the Common Stock.

46. At the time of the Second Tender Offer the defendants knew that it contained a statement which was untrue and misleading and omitted to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading.

47. Pursuant to the Second Tender Offer, TBG purchased 3,552,544 shares of Common Stock and 35,082 Warrants.

48. The Second Tender Offer was a further step in the series of fraudulent, deceptive and manipulative transactions intended by defendants to transfer control of Indian Head to TBG and thereby to defendant H. H. Thyssen-Bornemisza with the intent of wrongfully impairing the rights of the holders of the Warrants.

49. By reason of TBG's acquisition of approximately 90% of the Common Stock, the New York Stock Exchange delisted the Common Stock on or about September 24, 1974; and by reason of the delisting, the value of the Warrants has been substantially impaired.

50. All defendants participated in the acts and practices which constituted fraudulent, deceptive and manipulative acts and practices in contravention of the federal securities laws; each of said defendants knew that the Tender Offers contained untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading and knew that the plan to transfer

control of Indian Head to TBG and thereby to defendant H. H. Thyssen-Bornemisza would impair the rights of the holders of Warrants.

SECOND COUNT

Breach of Fiduciary Duties Owed by Defendants to Warrant Holders

51. Plaintiff repeats and realleges the allegations contained in Paragraphs 4 through 50 hereof and alleges that by reason thereof the defendants breached fiduciary duties owed by them to plaintiff and other members of the Class.

52. Defendant Indian Head, aided and abetted by TBG and the other defendants, breached the implied contractual representations made to all Warrant holders that Indian Head would not take any action likely to result in the delisting of the Common Stock from the New York Stock Exchange and thereby impair the value of the Warrants.

WHEREFORE plaintiff demands judgment

(a) that the rights of holders of Warrants be determined;

(b) that the plaintiff and other members of the Class be awarded the amount which the Court determines to be the diminution in the value of the Warrants by reason of the acts of defendants;

(c) that the costs and disbursements of this action including reasonable attorneys' and experts' fees be awarded to plaintiff and other members of the Class;

(d) that the Court grant such other and further relief as the Court may deem proper.

WOLF HALDENSTEIN ADLER FREEMAN
HERZ & FRANK

By _____
A Member of the Firm
Attorneys for Plaintiff
270 Madison Avenue
New York, New York 10016
(212) 689-5300

OPINION AND ORDER (Filed October 17, 1975)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CHESTER A. LESSLER, individually and on behalf of all others similarly situated,

Plaintiff,

-against-

DOMINION TEXTILE LIMITED, DHJ INDUSTRIES, INC., NEWCO INDUSTRIES CORP., et al.,

Defendants.

OPINION AND ORDER

75 Civ. 5025

#43261

APPEARANCES

Olshan, Grundman, Frome & Kretchmer
By: Victor M. Rosensweig, Esq.
Meredith A. Feinman, Esq.
Attorneys for Plaintiff

Paul, Weiss, Rifkind, Wharton & Garrison
By: Jack Hassid
Victoria G. Traube
Julie K. Herr
Attorneys for Defendant

KEVIN THOMAS DUFFY, D.J.

This is an action for a preliminary injunction to stay all efforts to merge DHJ Industries, Inc. ("DHJ") and Newco Industries Corp. ("Newco") and specifically to stop

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a DHJ shareholder's meeting scheduled for October 20, 1975. The matter was brought on by order to show cause and a hearing was held on October 14, 1975. The complaint alleges violations of sections 14(a) and 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. §§ 78n(c) and 78j(b), and the rules thereunder together with state law claims of breach of fiduciary duty and violation of N.Y. Bus. Corp. L § 902. After considering the arguments of counsel and the testimony presented, I find that no injunction should issue.

DHJ is a New York corporation engaged primarily in manufacturing and distributing indigo dyed denim and double-knit fabrics. Although the exact timing is not clear, DHJ was in default on more than $45 million of loans. Trading in DHJ had been halted on the American Stock Exchange on January 27, 1975.

By a tender offer of March 20, 1975 Dominion Textile Limited ("Dominion"), a publically held Canadian Corporation, offered $5 per share for the stock of DHJ. The offer was increased to $5.50 a share by amendment and was approved by DHJ's Board of Directors. As a result, Dominion acquired 95% of DHJ's outstanding common stock. Dominion immediately took steps to straighten out DHJ's troubled financial condition.

Newco was formed by Dominion as a wholly owned subsidiary solely for the purposes of the pending merger. The merger which requires a two-thirds approval is virtually certain of passage because of Dominion's overwhelming position in the stock. Under the merger agreement, shareholders other than Dominion will receive $5.50 per share for the stock leaving Dominion as the sole shareholder of DHJ. Those shareholders not voting in favor of the merger retain their appraisal rights under N.Y. Bus. Corp. L §§ 623, 910 in lieu of the $5.50 offer.

Plaintiff Charles A. Lessler, a shareholder of DHJ, complains that he and other shareholders comprising the 5% are being "squeezed" out unfairly. Specifically, he sets forth a series of alleged non-disclosures claimed to be material. No affirmative mistatements are alleged.

The relevant standard for determining whether a preliminary injunction should issue is clear in this circuit:

> The settled rule is that a preliminary injunction should issue only upon a clear showing of either (1) probable success on

> the merits and possible irreparable injury, or (2) sufficiently serious questions going to the merits to make them a fair ground for litigation and a balance of hardships tipping decidedly toward the party requesting the preliminary relief.

(Emphasis in original). Sonesta International Hotels Corp. v. Wellington Associates, 483 F.2d 247, 250 (2d Cir. 1973); Missouri Portland Cement Co. v. Cargill, Inc. 498 F.2d 851 (2d Cir.), cert. denied, 419 U.S. 883 (1974). Thus an examination into the merits of plaintiff's claims is essential.

Plaintiff first complains that no independent legal counsel or investment adviser has evaluated the fairness of the $5.50 offer. Plaintiff does not argue that DHJ has failed to disclose this fact but rather attempts to transform sections 14(a) and 10(b) and the rules thereunder into an affirmative duty to provide for such an evaluation. Disclosure is the standard. Popkin v. Bishop, 464 F.2d 714 (2d Cir. 1972).

The failure to disclose the current and future business prospects of DHJ is also alleged. An inspection

of the entire information statement particularly the section describing the business of DHJ including product lines, competition and business conditions as compared with the claimed omissions to state the true value of DHJ's operations fails to convince me that other than full disclosure of its present conditions has been made. As to future conditions, I know of nothing within sections 14(a) or 10(b) or their rules which would require a party to make this type of a projection. See Tanzer Economics Associates, Inc. v. Haynie, 388 F.Supp.365, 368 (S.D.N.Y. 1974).

Next plaintiff complains that the current report of operations for DHJ for the first quarter ending as of August 31, 1975 was not set forth in the Information Statement. Defendants argue that the information was not processed as of September 30, 1975, the date of the Information Statement but "is now available and is being filed [on Form 10Q] with the SEC." In addition, a letter from DHJ to all of its shareholders which includes an extensive summary of the quarterly report was sent on October 14, 1975. Regardless of the validity of defentants' excuse, I do believe their subsequent action in sending this letter lessens both the liklihood of

irreparable injury, as well as any possible hardship to the plaintiff. Sonesta International Hotels Corp. v. Wellington Associates, 483 F.2d 247, 250 (2d Cir. 1973). Thus, it should not be made the basis for a preliminary injunction.

The complaint also alleges that the true profitability of Swift Textiles Inc. ("Swift"), a subsidiary of DHJ was not adequately disclosed. I see no basis for this charge. The Information Statement discloses the fact of the 1974 acquisition of Swift, the nature of Swift's business and its sales and earnings figures since the acquisition. Plaintiff is calling for what amounts to future projections which is not required under the current law.

Equally meritless is the charge that the Information Statement does not set forth a valid business purpose for the merger. On the contrary, it discloses that Newco was formed solely for the merger and that the simple result of the merger will be the 100% ownership of DHJ by Dominion. The lack of a valid business purpose is not necessarily fatal under the federal securities laws. Tanzer Economics Associates, Inc. v. Haynie 388 F.Supp.365, 369 (S.D.N.Y. 1974).

Overall, I do not believe that the plaintiff has demonstrated a substantial liklihood of success on the merits or sufficiently serious questions going to the merits. Furthermore, the adequacy and ease of availability of the state remedy of appraisal eliminates the risk of irreparable injury and mitigates any hardhip to the plaintiff. Money damages would adequately compensate the plaintiff for any injury suffered.

Finally, the complaint contains a broad allegation of common law breach of fiduciary duty and a resulting violation of N.Y. Bus. Corp. L. §902. These state law claims are based in part on the alleged material omissions discussed and rejected above. It is also argued that the merger would run counter to a recent state court decision in People v. Concord Fabrics, Inc. 371 N.Y.S. 2d 550 (Sup. Ct. N.Y. County 1975). Although defendants urge that the case is easily distinguished, I express no opinion on this point.

A state court action was commenced by the plaintiff following the hearing held before me on October 14, 1975. These very same claims are raised therein. Since I find no merit to the federal law claims, I decline to excercise pendant jurisdiction over the state

claims. Calderone Enterprises Corp. v. United Artists Theatre Circuit, Inc., 454 F.2d 1292 (2d Cir.), cert. denied, 406 U.S. 930 (1972).

The request for a preliminary injunction is denied. This opinion constitutes findings of fact and conclusions of law pursuant to Rule 52, Fed. R. Civ. P.

SO ORDERED.

U. S. D. J.

New York, New York

October 17, 1975

NOTICE OF MOTION FOR DISMISSAL FOR LACK OF JURISDICTION OR FOR SUMMARY JUDGMENT WITH ACCOMPANYING MEMORANDUM AND SUPPORTING AFFIDAVITS AND EXHIBITS:

NOTICE OF MOTION FOR DISMISSAL FOR LACK OF JURISDICTION OR FOR SUMMARY JUDGMENT (Filed February 2, 1976)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SHAMROCK CORPORATION, et al.,

Plaintiffs,

-against-

INDIAN HEAD, INC., et al.,

Defendants.

75 Civ. 1736 (CES)

NOTICE OF MOTION FOR DISMISSAL FOR LACK OF JURISDICTION OR FOR SUMMARY JUDGMENT

S I R S :

PLEASE TAKE NOTICE that upon the complaint, the accompanying memorandum and supporting affidavits, the undersigned will move, pursuant to Rules 12(b)(2) and 56 of the Federal Rules of Civil Procedure, before the Honorable Charles E. Stewart, United States District Judge, at the United States Courthouse, Foley Square, New York, New York on March 15, 1976, at a time and place to be designated by the Court, as to defendants Thyssen-Bornemisza and Genillard for an order dismissing the complaint for lack of personal jurisdiction and, or alternatively, as to said defendants and defendant Katzenbach for summary judgment dismissing the complaint.

Dated: New York, New York
February 2, 1976

SHEARMAN & STERLING

By _____
A Member of the Firm
Attorneys for Defendants

Thyssen-Bornemisza Group N.V.
Thyssen-Bornemisza Inc.,
White, Weld & Co. Incorporated,
Herbert E. Bach[illegible]ch, Gerard B.
Huiskamp, [illegible]. Emery Katzenbach,
H.H. Thyssen-Bornemisza and
R.L. Genillard
53 Wall Street
New York, New York 10005
(212) 483-1000

TO:

WOLF, HALDENSTEIN, ADLER,
FREEMAN, HERZ & FRANK
Attorneys for Plaintiff
270 Madison Avenue
New York, New York 10016

CRAVATH, SWAINE & MOORE
Attorneys for Defendants
Richard J. Powers,
James F. Robison, and
Marshall F. Smith
One Chase Manhattan Plaza
New York, New York 10005

Richard J. Cutler
Attorney for Defendant
Indian Head, Inc.
Indian Head, Inc.
1211 Avenue of the Americas
New York, New York 10036

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

SHAMROCK CORPORATION, :

Plaintiff, : 75 Civ. 1736 (CES)

-against- :

INDIAN HEAD, INC., et al., :

Defendants. :

----------x

Defendants' Statement Pursuant to Rule 9(g) With Respect to the Motion by Defendants Thyssen-Bornemisza, Genillard and Katzenbach for Dismissal for Lack of Personal Jurisdiction or for Summary Judgment:

1. In 1973-74, defendants H. H. Thyssen-Bornemisza ("Thyssen") and R. L. Genillard both were, and still are, citizens of Switzerland where they reside and have their places of business.

2. In 1973-74, neither Messrs. Thyssen, Genillard nor Katzenbach was an officer or employee of Thyssen-Bornemisze Group, N.V. ("TBG"), Indian Head, Inc. ("IHD") or White, Weld & Co. Incorporated.

3. In mid-September, 1973, Thyssen came to New York to participate in some of the preliminary negotiations with representatives of IHD which culminated in the Memorandum of Understanding dated September 19, 1973 between IHD and TBG.

4. Mr. Thyssen did not come to the United

States with respect to the second tender offer in 1974.

5. Mr. Genillard came to the United States during the period August-September, 1973 to participate in some of the preliminary negotiations with representatives of IHD which culminated in the Memorandum of Understanding.

6. In June, 1974, Mr. Genillard came to the United States to discuss TBG's plans to increase its investment in IHD, the reasons for its decision to do such, and the future relationships of the two companies.

7. Neither Messrs. Thyssen, Genillard nor Katzenbach participated in drafting or approving either the September 27, 1973 or July 12, 1974 formal offers to purchase, in which TBG offered to purchase the Common Stock and Warrants [1974 only] of IHD.

8. Neither of the above mentioned formal offers to purchase were presented to them or the Supervisory Board of TBG for discussion or approval.

9. Messrs Thyssen, Genillard and Katzenbach did not know in either September, 1973 or July, 1974 and did not have any reason to known that either tender offer contained any misstatements or omissions.

February 2, 1976

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Affidavits	Tab No.
Richard J. Powers	A
Herbert E. Bachrach	B
R. L. Genillard	C
H. H. Thyssen-Bornemisza	D
H. Emery Katzenbach	E

Defendants' Joint Exhibits ("DJX")	DJX and Tab No.
Memorandum of Understanding dated September 19, 1973, between Indian Head and TBG	1
Letter from Lazard Freres & Co. to Indian Head's Board of Directors dated September 25, 1973	2
TBG's Offer to Purchase 1.1 million shares of Indian Head Common Stock, dated September 27, 1973	3
Supplementary Agreement dated October 24, 1973, between Indian Head and TBG	4
TBG's Offer to Purchase all outstanding Indian Head Common Stock and Warrants, dated July 12, 1974	5
Warrant Agreement dated May 15, 1965, governing the Indian Head Warrants	6

Unreported Decisions	
Lessler v. Dominion Textile Ltd., 75 Civ. 5025 (S.D.N.Y. 1975)	7

AFFIDAVIT OF RICHARD J. POWERS

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

SHAMROCK CORPORATION, Plaintiff, -against- INDIAN HEAD INC., et al., Defendants.	75 Civ. 1736 (CES) AFFIDAVIT OF RICHARD J. POWERS

STATE OF NEW YORK,)
) ss.:
COUNTY OF NEW YORK,)

RICHARD J. POWERS, being duly sworn, deposes and says:

1. I am Chairman and Chief Executive Officer of Indian Head Inc. I have held the position of Chairman since prior to September 1973 and I am familiar with the facts and circumstances set forth herein.

2. I make this affidavit in support of defendants' motion for summary judgment dismissing the complaint.

3. On September 19, 1973, following negotiations between representatives of Indian Head and Thyssen-Bornemisza Group N.V.* ("TBG") in which I participated, those two companies

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* The name of which was changed to Thyssen-Bornemisza Europe N.V. in April 1975.

entered into a Memorandum (the "Memorandum of Understanding"). That Memorandum constituted the agreement of the parties as to the terms on which Indian Head would cooperate with TBG in TBG's making a tender offer for between 750,000 and 1,100,000 shares of Indian Head Common Stock at $27 per share. Attached hereto as Defendants' Joint Exhibit ("DJX") 1 is a copy of the Memorandum of Understanding. Prior to the negotiations culminating in the Memorandum of Understanding there had been no relationship between Indian Head and TBG.

4. In Paragraph 9 of its First Tender Offer (DJX 3) TBG stated:

> "TBG does not intend to be involved directly in the day to day business operations and management of Indian Head. On the other hand, TBG does not intend to be merely a passive investor but rather, as a stockholder and through its representation on the Board of Directors and Committees of the Board, it intends to participate and have a significant voice in the formulation of policy and business strategy."

That statement accurately describes TBG's actions from October 1973, when it acquired approximately 34% of Indian Head's outstanding Common Stock, until the announcement of its second tender offer in July 1974. During that period TBG did not attempt to exercise independent control over the affairs of Indian Head and did not involve itself in the day-to-day business operations and management of Indian Head. Paragraphs 9 and 12 of TBG's First Tender Offer disclosed that following the first tender offer and the purchase of 750,000 shares of Common Stock from Indian Head TBG would own "between 26% and

32% of the issued and outstanding shares of the Common Stock", that "two nominees of TBG will be elected to the Indian Head Board of Directors, one of whom will become a member of the Executive Committee and Finance Committee", and that "J. E. Robison, Chairman of the Finance Committee of Indian Head, will be invited to join the Supervisory Board of TBG." These statements accurately described the events which occurred, except that TBG acquired slightly more stock than originally anticipated, becoming the owner of approximately 34% of the outstanding stock. During the period from October 1973 through the expiration of the second tender offer on August 19, 1974, the size of Indian Head's Board of Directors varied from between 19 and 15 members. To the best of my knowledge, in addition to the two TBG nominees only two other individuals who served as Indian Head directors during this period had any business or other relationship with TBG. Moreover, to the best of my knowledge, none of Indian Head's executive officers had any business or other relationship with TBG during this period.

5. Neither I nor, to the best of my knowledge, any other officer or director of Indian Head knew of any plan by TBG at the time of the first tender offer to acquire any interest in Indian Head beyond that contemplated by the Memorandum of Understanding. In the view of Indian Head's management, the two tender offers by TBG were separate and

distinct events. Neither Indian Head's Board of Directors nor any of its officers were informed that TBG was considering making a second tender offer until late May 1974 and that information came as a complete surprise to Indian Head's management. In so far as Indian Head is concerned, I deny the allegation in Paragraphs 30(a), 31(a), 34, 36, 48 and 50 of the Complaint that the first tender offer was part of a "scheme" or "plan" to transfer control of Indian Head to TBG. Furthermore, I have no reason to believe that at the time of the first tender offer TBG did, in fact, intend to acquire any interest in Indian Head beyond that contemplated by the Memorandum of Understanding.

6. I deny the allegation in Paragraph 31(a) of the Complaint that Indian Head's agreement to sell 750,000 shares of Indian Head Common Stock to TBG if the first tender offer succeeded had "no business purpose". Indian Head's Board of Directors had determined that it would be desirable for Indian Head to raise additional equity capital which could be added to working capital (or used to repay debt incurred to provide working capital) and would be available to help finance Indian Head's expansion, both internally and through acquisitions. Prior to approving the Memorandum of Understanding, Indian Head's Board sought the advice of its financial advisors, Lazard Freres & Co., and was told that the price which could be realized through the sale to TBG was significantly higher than the price which could be realized through a public

offering or a private sale to institutional investors and that the sale to TBG ". . . is, from a financing point of view, a transaction made on terms advantageous to the Corporation and its stockholders".* Moreover, the issuance was part of an overall transaction which had a "business purpose". TBG agreed in the Memorandum of Understanding to give Indian Head (i) a right of first refusal with respect to any business venture or investment TBG contemplated undertaking in the United States, and (ii) an opportunity to consider participating in any public offerings of the securities of its subsidiaries and affiliates. Indian Head's Board of Directors thus anticipated that Indian Head's relationship with TBG would assist Indian Head in expanding its business activities in the United States and could also prove beneficial by giving Indian Head an opportunity to acquire interests in TBG's subsidiaries and affiliates.

7. Attached hereto as DJX 3 is a copy of the Supplementary Agreement dated as of October 24, 1973 (the "Supplementary Agreement"), entered into by Indian Head and TBG pursuant to Paragraph 7 of the Memorandum of Understanding. In the Supplementary Agreement Indian Head agreed to pay the expenses of registering the Indian Head Common Stock held by TBG under the Securities Act of 1933, if and when registration

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* Attached hereto as DJX 2 is a copy of the letter from Lazard Freres to Indian Head's Board of Directors dated September 25, 1973, stating Lazard Freres' conclusions concerning the sale of Indian Head Common Stock to TBG.

is requested by TBG. No understanding on this matter existed at the time of the first tender offer. Indeed, Indian Head did not agree to assume these expenses until approximately October 22, 1973, twelve days after the first tender offer had expired.

8. I deny that allegation in Paragraph 31(d) of the Complaint that Indian Head's agreement to assume the cost of registration was "without consideration to Indian Head". Paragraph 7 of the Memorandum of Understanding contemplated that the basic understanding of the parties would be supplemented by reasonable agreements on subsidiary matters. The agreement concerning the expenses of registration was such an agreement and, as such, was supported by the consideration Indian Head received under its basic agreement with TBG, including the receipt of $20,250,000 in cash and the extension by TBG of a right of first refusal with respect to any subsequent disposition of its Indian Head Common Stock.

9. I estimate, after consultation with other officers of Indian Head, that the cost of registering the Indian Head Common Stock held by TBG under the Securities Act of 1933 almost certainly would not exceed $200,000 and would probably be substantially less. For the fiscal year ended December 1, 1973, Indian Head reported net sales of over $550,000,000, net income of over $18,000,000, and stockholders' equity of over $140,000,000.

10. The Indian Head Warrants are now listed on the American Stock Exchange and have been listed on that

Exchange continuously since they were issued in 1965. I have examined the daily high and low prices for the Indian Head Warrants on the American Stock Exchange as reported in Standard & Poor's Daily Stock Price Record, American Stock Exchange. That examination disclosed that (i) during the four weeks preceding the announcement of TBG's first tender offer (August 20 to September 19, 1973) the Warrants traded between a high of $7 and a low of $5-3/8; (ii) during the time from the announcement of the tender offer (September 20) until its expiration (October 10) the Warrants traded between a high of $8-3/8 and a low of $6-3/4; and (iii) during the four weeks following the expiration of the first tender offer the Warrants traded between a high of $7-3/8 and a low of $5-7/8.

11. Trading in Indian Head Common Stock on the New York Stock Exchange was suspended on August 20, 1974, and the Common Stock was formally delisted on September 24, 1975. An examination of the high and low prices for Indian Head Common Stock on the New York Stock Exchange as reported in Standard & Poor's Daily Stock Price Record, New York Stock Exchange disclosed that the Common Stock traded between a high of $22-1/2 and a low of $17-1/2 during the four weeks preceding the announcement of TBG's first tender offer (August 20 to September 19, 1973). A review of business records of Indian Head for the most recent four-week period for which information is available (November 17 to December 12, 1975) disclosed that Indian Head Common Stock traded in the over-the-counter market between a high of

$20-1/4 and a low of $19-7/8 per share.

12. Paragraph 13 of TBG's First Tender Offer accurately described the prevailing situation with respect to the listing of Indian Head Common Stock:

> "New York Stock Exchange Listing Status. The Department of Stock List of the New York Stock Exchange has indicated that if the ownership by TBG of Indian Head Common Stock should rise above 32% (or 30%, if 30% or less is purchased pursuant to this Offer and the Agreement referred to above) such additional ownership might ultimately result in the delisting of Indian Head Common Stock from the Exchange. TBG has expressed to Indian Head its commitment that it will consult with Indian Head before taking any action, other than the transactions described in this Offer, which would increase TBG's ownership of Indian Head Common Stock beyond 30% of the outstanding shares. Delisting could also result if the number of persons holding at least 100 shares of Indian Head Common Stock (approximately 4,000 at the present time) should fall below 1,200."

Prior to the public announcement of this tender offer representatives of TBG and Indian Head had contacted the Department of Stock List of the New York Stock Exchange and reached an understanding that the Exchange would continue to list Indian Head Common Stock after the first tender offer, provided TBG did not acquire more than 32% of the outstanding Common Stock as a result of the tender offer and the purchase of 750,000 shares from Indian Head. This understanding was subsequently modified to permit TBG to purchase the excess shares tendered in response to its first tender offer (and thereby acquire approximately 34% of Indian Head's outstanding Common Stock).

13. Both tender offers were, of course, made and controlled by TBG. Indian Head did not encourage its security-holders to accept TBG's tender offers or otherwise assist TBG in making those offers, other than by supplying TBG with lists of the holders of Indian Head Common Stock and Warrants.

14. Except for the regular payment of dividends on the Indian Head Common Stock held by Thysser.-Bornemisza Inc. ("TBI") and, as fully described in Paragraph 9 of TBG's Second Tender Offer, the payment by Indian Head to TBI of the amount Indian Head's income taxes are reduced as a result of its filing consolidated tax returns with TBI, there has been no transfer of funds from Indian Head to TBI.

15. Attached hereto as DJX 6 is a copy of the Warrant Agreement, dated May 15, 1965, governing the issuance of the Indian Head Warrants.

Richard J. Powers

Sworn to before me this)
)
day of January 1976.)

Notary Public

VINCENT J. ROMANO
Notary Public, State of New York
[illegible]
[illegible] 1976

AFFIDAVIT OF HERBERT E. BACHRACH

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

SHAMROCK CORPORATION Plaintiff, -against- INDIAN HEAD INC., et al., Defendants.	75 Civ. 1736 (CES) AFFIDAVIT IN SUPPORT OF MOTION

AMSTELVEEN)
) ss.:
THE NETHERLANDS)

HERBERT E. BACHRACH, being duly sworn, states:

1. I am one of the defendants in this action and submit this affidavit in support of defendants' motion for dismissal or summary judgment.

2. I am presently a member of the Board of Management of Thyssen-Bornemisza nv (the "Holding Company"), not a party to this action. Until September 1, 1975 I was a member of the Board of Management of Thyssen-Bornemisza Group ("TBG"), after April 3, 1975 called Thyssen-Bornemisza Europe ("TBE"). I was first elected to the latter position on November 1, 1973.

During all times in 1973 prior to that date, I was head of the Department of Planning and Development of TBG. During all times in 1973 and 1974, I was responsible for TBG's corporate strategic planning, including acquisitions and divestments. In that respect, I had direct personal knowledge of and direct personal involvement in the planning and decisions to invest in Indian Head.

3. Paragraph 30(a) of the complaint herein alleges that the 1973 tender offer contained untrue or misleading statements in that

> "(a) TBG intended to acquire control of Indian Head by means of the First Tender Offer, both by itself and as part of a scheme to do so;"

Further, paragraphs 31(b) and (c) of the complaint state that the 1973 tender offer omitted to state that

> "(b) TBG would be in a position, following the consummation of the First Tender Offer, to exercise control over Indian Head.
>
> "(c) TBG intended to acquire greater control of Indian Head through transactions other than the transactions described in the First Tender Offer, to wit, a Second Tender Offer."

Paragraphs 31(a), 34 and 36 assert that TBG and the other defendants intended to transfer control of Indian Head to TBG. These allegations are totally false.

The final decision by TBG to invest in Indian Head was made by the Board of Management and Supervisory Board on September 19, 1973. That decision to invest in Indian Head was a partial implementation of a program initiated by TBG in approximately 1972 to diversify and to achieve geographical expansion. Prior to that time, TBG's operations were concentrated in the Netherlands and Germany. The specific authority granted by the TBG Board of Management and its Supervisory Board on the aforesaid date in September 1973 was to acquire only between 26 and 32 percent of the issued and outstanding shares of the Common Stock of Indian Head. TBG sought its investment in Indian Head as a vehicle for direct participation by TBG in United States industry. I personally did not believe and I know of no other member of the TBG Board of Management or Supervisory Board that believed in September 1973 that TBG would invest in Indian Head any further than the above stated 26 to 32 percent interest or that more than 1,100,000 shares would be purchased if more than such amount were tendered. In any event, neither before or on September 19, 1973, nor at any time prior to May 1974, were plans or proposals brought to the attention of TBG's Board of Management or Supervisory Board to make a second tender offer or to increase its investment in Indian

Head beyond that achieved by TBG's September 27, 1973 tender offer. In addition, I personally did not believe and I know of no other member of said boards that believed in September 1973 that if the tender offer were successful, TBG would in any way be directly involved in or control the day to day business operations and management of Indian Head.

4. After the September 1973 tender offer TBG continued to pursue its program of diversification and expansion and explored possible investments in a number of United States companies. On February 21, 1974, TBG made a tender offer for a maximum of 1.8 million shares of the Common Stock of VCA Corporation, a company doing business primarily in the United States. This tender offer was withdrawn when Ethyl Corporation made a competing offer at a higher price. If successful, this tender offer would have involved the expenditure of approximately $72,000,000 by TBG, and TBG would then not have been in a position to invest further in Indian Head. The management of Indian Head was not informed that TBG was considering acquiring an additional interest in Indian Head until late May 1974. To the best of my knowledge, this information came as a complete surprise to Indian Head's Management. On June 5, 1974, the Board of Management was authorized by the Supervisory Board to initiate negotiations with Indian Head's management with

a view to increasing TBS's investment in Indian Head. Final approval by the Supervisory Board was not granted until July 3, 1974.

5. At the time of the September 1973 tender offer and until a decision ultimately was made to increase TBG's investment in Indian Head in June 1974, no plans or proposals were presented to TBG's Board of Management or Supervisory Board which contemplated that TBG would attempt to do anything more than, as disclosed in paragraph 9 of TBG's September 29, 1973 Offer to Purchase, "participate and have a significant voice in the formulation of [Indian Head] policy and business strategy". The TBG Boards believed Indian Head to be well managed and had no desire to exercise independent control over Indian Head's affairs. As provided in the September 19, 1973 Memorandum of Understanding, two TBG nominees were elected to the Indian Head Board in Fall 1973 and J. E. Robison, Chairman of Indian Head's Finance Committee, was elected to TBG's Supervisory Board. Thus, from October 1973 until after August 1974 when the second tender offer expired only two of Indian Head's Directors were nominees of TBG. During that period Indian Head had 15 to 19 directors.

6. Regarding the next allegation, paragraph 30(b) of the complaint states that the 1973 tender offer contained untrue or misleading statements in that:

> "(b) The funds requisite to effect the First Tender Offer and the purchase of 750,000 shares of Common Stock were to be supplied through the mechanism of a sale of the shares acquired by TBG to TBI, which had been incorporated on September 11, 1973, and ultimately by borrowings from banks."

This allegation is likewise totally false. TBG paid the stockholders who tendered in response to the first tender offer out of TBG's general funds. Funds sufficient to make the necessary payments were transferred from TBG accounts at several banks to a TBG account at Chase Manhattan Bank and checks drawn on that account were mailed to tendering stockholders in October 1973. The funds used consisted of working capital in excess of TBG's needs.

TBG incorporated Thyssen-Bornemisza Inc. ("TBI") in early September 1973 to serve as a possible vehicle for making the 1973 tender offer. After consideration of the tax and other ramifications of utilizing TBI, as opposed to TBG, for making the 1973 tender offer, it was decided that TBI should not take any part in the 1973 tender offer. TBI had no role whatsoever in the 1973 tender offer; specifically, no funds necessary to effect the offer were supplied through any sale to TBI of Indian Head Common Stock acquired by TBG. After TBG's acquisition of its

interest in Indian Head, TBG explored other investments in United States companies but was unable to consummate any such investment. Until May 1974, when TBG's Boards first began to consider an increase in TBG's investment in Indian Head, no plan or proposal involving the transfer of TBG's Indian Head stock to TBI had been brought to the attention of TBG's Board of Management or Supervisory Board. TBG's Indian Head stock was transferred to TBI on or about August 1, 1974, nine months after the stock acquired pursuant to the first tender offer had been paid for with checks drawn on a TBG bank account. The stock acquired by TBG was registered in TBG's name until the transfer to TBI in August 1974.

7. Paragraph 31(d) of the complaint alleges that the 1973 tender offer omitted to state that

> "(d) TBG and Indian Head intended the supplementary agreement . . . to provide more than the inconsequential matters referred to in Item 12, to wit, that Indian Head would be committed to register the Common Stock owned by TBG under the Securities Act of 1933 without consideration to Indian Head."

The referred to supplementary agreement was, in fact, finally executed on October 24, 1973 (see complaint ¶39), two weeks after the expiration of the first tender offer. The terms of that supplementary

agreement were the subject of intensive negotiations between Indian Head and TBG and no decision was reached as to who would bear the costs of registration until approximately October 22, 1973, twelve days after the expiration of the tender offer.

8. Paragraphs 31(e), (f) and 34 of the complaint allege that the 1973 tender offer omitted to state that

> "(e) An effect of the First Tender Offer would be the substantial impairment of the value of the Warrants.
>
> (f) TBG intended to impair the value of the Warrants by eliminating the New York Stock Exchange market for the Common Stock.
>
> . . .
>
> 34. The First Tender Offer and the acquisition by TBG of 1,213,619 shares of Common Stock was one step in a series of fraudulent, deceptive and manipulative transactions intended by the defendants to transfer control of Indian Head to TBG and thereby to defendant H. H. Thyssen-Bornemisza with the intent of wrongfully impairing the rights of the holders of the Warrants."

Paragraph 36 reiterates that TBG and the other defendants had "the intent of wrongfully impairing the rights of the holders of the Warrants." All these

allegations are simply not true. TBG has never taken action which had as its goal or purpose either an impairment of the value of the warrants or a delisting of Indian Head Common stock from the New York Stock Exchange ("NYSE"). Nor was there any undisclosed reason at the time of the first tender offer to believe that the common stock would be delisted or the value of the warrants impaired. Until it decided to tender for all the outstanding Indian Head common stock in July 1974, TBG desired to preserve the listing of the stock on the NYSE. TBG's first tender offer accurately described the prevailing situation with respect to the listing of Indian Head common stock (¶13):

> "New York Stock Exchange Listing Status. The Department of Stock List of the New York Stock Exchange has indicated that if the ownership by TBG of Indian Head Common Stock should rise above 32% (or 30%, if 30% or less is purchased pursuant to this Offer and the Agreement referred to above) such additional ownership might ultimately result in the delisting of Indian Head Common Stock from the Exchange. TBG has expressed to Indian Head its commitment that it will consult with Indian Head before taking any action, other than the transactions described in this Offer, which would increase TBG's ownership of Indian Head Common Stock beyond 30% of the outstanding shares. Delisting could also result if the number of persons holding at least 100 shares of Indian Head Common Stock (approximately 4,000 at the present time) should fall below 1,200."

Prior to the public announcement of this tender offer representatives of TBG and Indian Head had contacted the Department of Stock List of the NYSE and reached an understanding that the Exchange would continue to list Indian Head common stock after the first tender offer, provided TBG did not acquire more than 32% of the outstanding shares as a result of the tender offer and the purchase of 750,000 shares from Indian Head. This understanding was subsequently modified to permit TBG to purchase the excess shares tendered in response to its offer (and thereby acquire approximately 34% of Indian Head's shares). In light of the understanding with the NYSE, TBG agreed to consult with Indian Head before taking any future action which would increase TBG's ownership of Indian Head.

9. The complaint alleges (¶31(g)) that the 1973 tender offer omitted to state that

> "(g) TBG intended to acquire all shares tendered without regard to the ceiling of 1,100,000 shares stated in its offer."

This is not so. At the time of the offer, no plans or proposals had been brought to the attention of TBG's Board of Management or Supervisory Board to accept more than 1,100,000 shares. It was only after

an excess of 113,619 shares were tendered that TBG elected to accept the excess shares. This decision was made because the number of excess shares was comparatively small and prorating the purchase among all the stockholders who tendered would have required TBG to return a small number of shares to each stockholder who tendered thereby possibly irritating many of those stockholders.

10. Regarding the allegations concerning the 1974 tender offer, the complaint alleges (¶44) that it contained untrue or misleading statements in that

> "...all the funds to be used by TBG to make the purchases under the Second Tender Offer were to be supplied through the mechanism of a sale of the shares acquired by TBG to TBI and ultimately by borrowings from banks."

The complaint alleges further (¶45(b)) that the 1974 tender offer omitted to state that

> "(b) TBG would partially finance the purchase contemplated by the Second Tender Offer by a transfer of funds from Indian Head to TBI."

The 1974 Offer to Purchase accurately stated the source of funds for the second tender offer. Immediately after the expiration of that tender offer, TBG transferred to TBI the Indian Head common stock acquired. TBG's intention to make this transfer was fully disclosed in its July 1974 Offer to Purchase (¶9). Tendering stockholders and warrant holders

were paid with checks drawn on an account maintained in the name of TBI at The First Jersey National Bank. TBI obtained the funds needed to make these payments by borrowing approximately $96,000,000. As disclosed in the Offer to Purchase (¶ 11), $50,000,000 was supplied by borrowings under the 7-year multi-currency revolving credit agreement and the remaining $46,000,000 was supplied by short-term borrowings. All of TBI's borrowings were guaranteed by TBG. Except for the regular payment of dividends on the Indian Head shares held by TBI and, as fully disclosed in the July 1974 Offer to Purchase (¶ 9), the payment by Indian Head to TBI of the amount Indian Head's income taxes are reduced as a result of its filing consolidated tax returns with TBI, there has been no transfer of funds from Indian Head to TBI. Hence, there were no undisclosed transfers of funds from Indian Head to TBI which could be said to have "partially financed" the second tender offer.

11. The complaint alleges (¶45(a)) that the 1974 tender offer omitted to state that

> "(a) The price at which TBG offered to purchase the Warrants was not based upon a fair assessment of the value of the Warrants, but was fixed arbitrarily by TBG without reference to the fair value of the Warrants at a price less than the fair value thereof."

The price of $2.00 (later raised to $2.25) at which TBG offered to purchase the warrants was simply the

difference, $2.00, between the offering price, $27.00 per share, for the shares obtainable by exercise of the warrants and the warrants' exercise price, $25.00. TBG made no representation that such price was adequate or fair because nothing was ever brought to the attention of the Board suggesting that United States law required any such representation or even that a tender offer for securities be made at a price equal to the fair value.

12. Finally, the complaint alleges (¶45(c)) that the 1974 tender offer omitted to state that

> "(c) TBG intended to impair the value of the Warrants by eliminating the New York Stock Exchange market for the Common Stock."

In July 1974, the published guidelines of the NYSE indicated that it would consider delisting the common stock of a corporation if the number of publicly held shares was less than 600,000. Because the NYSE had indicated that it would probably commence action to delist the Indian Head shares if such guidelines were met, I believed in July 1974 that there was a substantial possibility the common stock would be delisted if the offer were successful. However, it

was not my intent or purpose, nor to my knowledge was it the intent or purpose, of any other member of the Boards to impair the value of the common stock or the warrants. The offer was part of TBG's heretofore mentioned plan of increased investment in United States industry and, as explained in the offer itself, one of the purposes of the July 12, 1974 tender offer was to acquire control of Indian Head.

13. Attached hereto as Defendants' Joint Exhibit ("DJX") 3 is a copy of TBG's Offer to Purchase 1,100,000 Shares of Common Stock of Indian Head Inc., dated September 26, 1973.

14. Attached hereto as DJX 5 is a copy of TBG's Offer to Purchase All Outstanding Shares of Common Stock and Warrants to Purchase Common Stock of Indian Head Inc., dated July 12, 1974.

Herbert E. Bachrach

Sworn to me before this
13th day of January, 1976

Notary Public

MR. P. J. N. VAN C. - NOTARIS TE AMSTERDAM - S.

AFFIDAVIT OF R. L. GENILLARD

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SHAMROCK CORPORATION,	:	
Plaintiff,	:	75 Civ. 1736 (CES)
-against-	:	
INDIAN HEAD INC., et al.,	:	AFFIDAVIT IN SUPPORT OF MOTION
Defendants.	:	

AMSTELVEEN)
) ss.:
THE NETHERLANDS)

R. L. GENILLARD, being duly sworn, states:

1. I am one of the defendants in this action and submit this affidavit in support of the motion made in my behalf to dismiss the summons and complaint on the ground that this court lacks jurisdiction over my person and, alternatively, for summary judgment. The facts stated below are asserted upon my personal knowledge, except where otherwise stated.

2. I am Deputy Chairman of the Supervisory Board of Thyssen-Bornemisza nv (the "Holding Company"), registered in Curacao, the Netherlands Antilles. That company, not a party to this action, was organized

on December 19, 1974. It serves as a holding company for its two major subsidiaries: (1) Thyssen-Bornemisza Group nv ("TBE"), headquartered in Amstelveen, the Netherlands and since April 3, 1975, named Thyssen-Bornemisza Europe nv ("TBG") and (2) Thyssen-Bornemisza Inc. ("TBI"), a Maryland corporation, wholly owned by the Holding Company and itself owning approximately 90% of the common stock of Indian Head Inc. ("Indian Head"), headquartered in New York, New York. It was TBG which, in 1973 and 1974, made two separate tender offers resulting in TBG acquiring approximately 90% of Indian Head's shares, subsequently transferred to TBI.

3. During all of 1973, 1974 and 1975 I was Deputy Chairman of the Supervisory Board of TBG. The Supervisory Board of a Netherlands company, such as TBG is, I am advised, as concerns responsibilities, roughly equivalent to the board of directors of an American corporation in that the ultimate responsibility for the supervision of the management is vested in the Supervisory Board. However, as concerns Board membership, the Supervisory Board of a Netherlands company, such as TBG, unlike an American company, consists only of persons who have no management position or day-to-day management responsibilities

with the corporation, i.e., outside directors. I am such an outside director of TBG and I am not now nor have I ever been, a director, officer or employee of Indian Head.

4. I am a citizen of Switzerland, my residence is at Gilly,Vaud, Switzerland and my place of business is at Geneva, Switzerland. A copy of the summons and complaint in this action was delivered to me by mail at the latter address.

5. As Deputy Chairman of the Supervisory Board of TBG in 1973 and 1974 my responsibilities encompassed, with the other members of the Supervisory Board, the overall supervision of the management of TBG. The actual performance of these duties required my attendance at monthly meetings of the Supervisory Board in 1973 and 1974, all of which meetings prior to November 1974 were held in Amstelveen, the Netherlands.

6. During all of 1973 and continuing to early May 1974, I was also a director of White, Weld & Co. Incorporated ("White, Weld"), a Delaware corporation, engaged in investment banking, with its principal offices at 91 Liberty Street, New York, New York. White, Weld, a defendant herein, was retained by TBG to act as dealer-manager for TBG concerning both the 1973 and 1974 tender offers.

I was not, however, an officer or employee of White, Weld in either 1973 or 1974. During all of 1973 I was also Chairman of the Board of Directors and of the Management Committee of WW Trust, a Swiss corporation and partially owned by White, Weld, but with the majority of its shares and votes Swiss owned and with its principal place of business at Zug, Switzerland. WW Trust was in the businesses of merchant banking and investment banking outside the United States. WW Trust is not a defendant of this action, I am advised.

7. On or about May 2, 1974, WW Trust was restructured and its name changed to Societe anonyme financiere du Credit Suisse et de White Weld ("FCSWW") with its principal place of business and the nature of its business continued as described above. I am advised, that FCSWW is not a defendant in this action. I continued as and still hold the position of Chairman of the Board of Directors but am no longer Chairman of the Managment Committee of FCSWW.

Approximately contemporaneously therewith in 1974, White Weld Holdings, Inc. ("White Weld Holdings"), a Delaware corporation, was formed, and White, Weld was reorganized. As a result thereof at the time of the second TBG tender offer in July and August, 1974, I was a Director and Vice Chairman of the Board of White Weld Holdings which wholly owned

White, Weld; and White Weld Holdings also owned a minority interest in FCSWW. As a further result of the restructuring and reorganization, FCSWW, located in Zug, Switzerland, was engaged in the merchant banking and investment banking businesses wholly outside of the United States and White, Weld, in New York City, was engaged in the investment banking business principally inside the United States. Also, on or about May 10, 1974, I resigned my position as director of White, Weld so that at the time of the second TBG tender offer in July-August 1974, I was not an officer, director or employee of White Weld.

8. In sum, in 1973 and 1974 at the times of the two tender offers I was Deputy Chairman of the Supervisory Board of TBG and Chairman of the Board of Directors and of the Management Committee of WW Trust, in 1974 renamed FCSWW. Also, in 1973, at the time of the first tender offer, I was a director of White Weld, but I resigned that position on May 10, 1974. Thus, at the time of the second offer, I held no position with White, Weld.

9. Despite plaintiff's allegations to the contrary (complaint ¶s 32, 46, 50, 51 and 52), I did not participate in any fraudulent, deceptive or manipulative acts and practices in contravention

of the United States federal securities law or any other law. Specifically, at the time that the formal offers to purchase were prepared and disseminated in the United States, I personally did not know, nor do I know now, nor do I have any reason to know, that the formal offers to purchase contained untrue statements or omitted to state material facts.

10. My personal involvement in the first tender offer made by TBG on September 27, 1973 to the holders of Indian Head common stock was to: (a) In August 1973 participate, in Europe and in New York, in preliminary contacts and subsequent negotiations between representatives of TBG and Indian Head looking toward TBG's investment in Indian Head; (b) attend the meeting of the Supervisory Board of TBG held at the Schiphol Hilton Hotel outside of Amstelveen, the Netherlands on September 5, 1973 at which Mr. G.B. Huiskamp, Chairman of the Board of Management of TBG, and I were given responsibility for concluding arrangements with the management of Indian Head; (c) consult by telephone from Europe with Mr. Huiskamp in the United States, who actually concluded subsequent negotiations with Indian Head management; (d) approve, by telephone from Switzerland to Amstelveen, the Netherlands at an extraordinary meeting of the TBG Supervisory Board held by telephone on September 19, 1973,

authorization given to the management of TBG to proceed to make a tender offer to acquire between 26 and 32% of the common shares of Indian Head at $27 per share. I did not personally play any part in the preparation of the formal offer to purchase or other related documents which, I am advised, were mailed to Indian Head's shareholders. Specifically, I did not participate in the drafting of, nor did I approve of, because it was never submitted to me personally, or to the Board of Directors of White, Weld or to the Supervisory Board of TBG for discussion or approval, the formal offer to purchase dated September 27, 1973 which, I am advised, is the only document plaintiff quotes from in its complaint and alleges is false and misleading. Moreover, except for communications I had with representatives of White, Weld and the Indian Head management, I did not communicate with any Indian Head shareholder or warrant holder in the United States by telephone, the mail, telex or other instrumentality of interstate commerce concerning the 1973 tender offer nor did I personally visit the United States during 1973 in connection with said 1973 tender offer.

11. Respecting the second tender offer dated July 12, 1974, my personal involvement in that offer was of a similar nature to my involvement in

the first tender offer, namely (1) on June 5, 1974, I attended a meeting of the Supervisory Board of TBG held in Amstelveen, the Netherlands, at which the Supervisory Board authorized the management to initiate negotiations with Indian Head's management to increase TBG's investment in Indian Head; (2) I personally met both in Europe and New York with representatives of Indian Head's management including Mr. J.E. Robison, Director and Chairman of the Finance Committee, and Richard J. Powers, Chairman and Chief Executive Officer of Indian Head, for the purpose of discussing, TBG's plan to acquire additional shares of Indian Head, the reasons for TBG increasing its investment in Indian Head, the future relationships of the two companies should TBG increase its investment in Indian Head and the terms of TBG's acquisition of additional shares; and (3) on July 3, 1974 I attended a meeting of the Supervisory Board of TBG held in Amstelveen, the Netherlands, at which approval was given to the Board of Management of TBG to acquire all of the outstanding shares and warrants of Indian Head.

12. Again, despite plaintiff's allegations to the contrary, at the time that the second tender offer to purchase was prepared and disseminated in the United States, I personally did not know, nor do I now

know, nor did I have any reason to know, that the formal offer to purchase dated July 12, 1974, which is the only document plaintiff quotes from in its complaint and alleges is false and misleading, contained any untrue statements or omitted to state material facts. Specifically, I did not participate in the drafting of, nor did I approve, said formal offer to purchase because it was never submitted to me personally, to the Board of Directors of CSWW or to the Supervisory Board of TBG for discussion or approval. Again, except for communications with representatives of White, Weld, TBG or Indian Head's management, I did not communicate with any Indian Head shareholder or warrantholder in the United States by telephone, the mail, telex or other instrumentality of interstate commerce concerning the 1974 tender offer nor, except as stated above, did I personally visit the United States during 1974 in connection with the 1974 tender offer.

13. In connection with the motions to dismiss which, I am advised, are being made on behalf of the defendants in this action, I have read the supporting affidavit of Herbert E. Bachrach, sworn to January 13, 1976. While I do not have personal knowledge of every detail described in Mr. Bachrach's affidavit, I nevertheless find nothing therein with

which I would disagree. I do have personal knowledge as to the statements made in paragraphs 3, 4 and 5 of Mr. Bachrach's affidavit and fully endorse them as being true.

Sworn to before me

this 13th day of January, 1976

MR. P. J. N. VAN SO - NOTARIS TE AMSTERDAM -

AFFIDAVIT OF H. H. THYSSEN-BORNEMISZA

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SHAMROCK CORPORATION, Plaintiff,	75 Civ. 1736 (CES)
-against-	
INDIAN HEAD INC., et al., Defendants.	AFFIDAVIT IN SUPPORT OF MOTION

AMSTELVEEN)
) ss.:
THE NETHERLANDS)

H. H. THYSSEN-BORNEMISZA, being duly sworn, states:

1. I am one of the defendants in this action and submit this affidavit in support of the motion made in my behalf to dismiss the summons and complaint herein on the ground that this court lacks jurisdiction over my person and, alternatively, for summary judgment. In support of this motion the facts set forth below are asserted upon my personal knowledge, except where otherwise stated.

2. I am Chairman of the Supervisory Board of Thyssen-Bornemisza nv (the "Holding Company"), registered in Curacao, the Netherlands Antilles. That company, not a party to this action, was organized on December 19, 1974. It serves as a

holding company for its two major subsidiaries: (1) Thyssen-Bornemisza Group nv ("TBG"), headquartered in Amstelveen, the Netherlands and since April 3, 1975, named Thyssen-Bornemisza Europe nv ("TBE") and (2) Thyssen-Bornemisza Inc. ("TBI"), a Maryland corporation, wholly-owned by the Holding Company and itself owning approximately 90% of the common stock of Indian Head Inc. ("Indian Head"), headquartered in New York, New York. It was TBG which, in 1973 and 1974, made two separate tender offers resulting in TBG acquiring approximately 90% of Indian Head's shares, subsequently transferred to TBI.

3. During all of 1973, 1974 and 1975 I was Chairman of the Supervisory Board of TBG. The Supervisory Board of a Netherlands company such as TBG is, I am advised, as concerns responsibilities, roughly equivalent to the board of directors of an American corporation in that the ultimate responsibility for the supervision of the management is vested in the Supervisory Board. However, as concerns Board composition, the Supervisory Board of a Netherlands company such as TBG, unlike an American company, consists only of persons who have no management position or day-to-day management responsibilities with the corporation, i.e., outside directors. I am not now nor have I ever been a director, officer or employee of Indian Head.

4. I am a citizen of Switzerland and both my residence and place of business are in the village of Castagnola-Lugano, in the canton of Ticino, Switzerland. A copy of the summons and complaint in this action was delivered to me by mail at that address.

5. As Chairman of the Supervisory Board of TBG, my responsibilities included, together with the other members of the Supervisory Board, the overall supervision of the management of TBG. The actual performance of these duties required only attendance at monthly meetings of the Supervisory Board in 1973 and 1974 and other occasional, perhaps weekly, contacts with the management of TBG concerning its business. In 1973 prior to its acquisition of an interest in Indian Head, TBG did no business in, nor owned any subsidiaries in, the United States. Thus, my contacts with the management of TBG occurred wholly outside of the United States. Also, all of the meetings of the Supervisory Board which I attended prior to November 1974 were held in Amstelveen, the Netherlands.

6. Despite plaintiff's allegations to the contrary (complaint ¶s 32, 46, 50, 51 and 52), I did not participate in any fraudulent, deceptive or manipulative acts and practices in contravention of

the United States federal securities law or any other law. Specifically, at the times that the formal offers to purchase concerning the two tender offers were prepared and disseminated in the United States, I personally did not know, nor do I know now, nor do I have any reason to know, that the formal offers to purchase contained untrue statements or omitted to state material facts.

7. My personal involvement in the first tender offer made by TBG on September 27, 1973 to the holders of Indian Head common stock was to (1) prior to and in September 1973 consult in Amstelveen with TBG's Board of Management about their desire to diversify and achieve geographic expansion, particularly into the United States and particularly through acquisition of an investment in Indian Head Inc.; (2) meet with Mr. J.E. Robison, director and Chairman of the Finance Committee of Indian Head in late August 1973 both in Amstelveen, the Netherlands and at my residence and place of business in Catagnola-Lugano, Switzerland, and in September in Kenya, Africa and discuss the reasons for TBG's interest in Indian Head, the future relationships between the two companies, an exchange of directors should TBG acquire an interest in Indian Head, and the terms of and Indian Head's cooperation

with a tender offer for shares; (3) preside over the meeting of the Supervisory Board of TBG held at the Schiphol Airport outside Amstelveen, the Netherlands on September 5, 1973 at which representatives of TBG, myself not included, were authorized to conclude arrangements with Indian Head; (4) preside over an extraordinary meeting of the Supervisory Board of TBG held, by telephone, on September 19, 1973 at which management of TBG was authorized to proceed to make a tender offer to acquire between 26 and 32% of the common shares of Indian Head at $27 per share; and (5) attend and participate in a meeting held in New York City on September 19, 1973 with representatives of TBG's management at which there was general discussion of the same matters described under item 2 above.

8. I did not personally play any part in the preparation or approval of the formal offer to purchase dated September 27, 1973 which, I am advised, is the only document plaintiff quotes from in its complaint and alleges is false and misleading. Specifically, I did not participate in the drafting of, nor did I approve of - because it was never submitted to me or the Supervisory Board of TBG for discussion or approval - said formal offer to purchase. Except for communications with

representatives of Indian Head's management, I did not communicate with any Indian Head shareholder or warrantholder in the United States by telephone, the mail, telex or other instrumentality of interstate commerce concerning the 1973 tender offer nor, except as noted, did I personally visit the United States during 1973 in connection with the 1973 tender offer.

9. Respecting the second tender offer dated July 12, 1974, my personal involvement in said offer was of a similar nature to my involvement in the first tender offer, namely: (1) beginning in late May 1974, I conferred in Europe with the management of TBG and Indian Head concerning plans to increase TBG's investment in Indian Head; (2) on June 5, 1974, I presided over a meeting of the Supervisory Board of TBG held in Amstelveen, the Netherlands, at which the Board of Management of TBG was authorized to initiate negotiations with Indian Head's management to increase TBG's investment in Indian Head; (3) I personally met in Europe during June 1974 on several occasions with representatives of Indian Head including Messrs. Robison and Powers for the purpose of discussing, in principle, TBG's plan to acquire additional shares of Indian Head, the reasons therefor, and the future relationshipe of the two companies

should TBG increase its investment in Indian Head; and (4) on July 3, 1974 I presided over a meeting of the Supervisory Board of TBG held in Amstelveen, the Netherlands, at which approval was given to the Board of Management of TBG to acquire all of the outstanding shares and warrants of Indian Head at $27 and $2 each, respectively.

10. Again, despite plaintiff's allegations to the contrary, at the time that the second tender offer was prepared and disseminated in the United States, I personally did not know, nor do I now know, nor do I have any reason to know, that the formal offer to purchase, dated July 12, 1974, which is the only document plaintiff quotes from in its complaint and alleges is false and misleading, contained any untrue statements, or omitted to state material facts. Specifically, I did not participate in the drafting of, nor did I approve of, said formal offer to purchase, because it was never submitted to me or to the Supervisory Board of TBG for discussion or approval. Except as described above in paragraph 9 and as I may have communicated with Indian Head's management, I did not communicate with any Indian Head shareholder or warrant holder in the United States by telephone, the mail, telex or other instrumentality of interstate commerce concerning the 1974 tender offer nor did I personally

visit the United States in 1974 in connection with said tender offer.

11. In connection with the motions to dismiss which, I am advised, are being made on behalf of the defendants in this action, I have read the supporting affidavit of Herbert E. Bachrach, sworn to January 13, 1976. While I do not have personal knowledge of every detail described in Mr. Bachrach's affidavit, I nevertheless find nothing therein with which I would disagree. I do have personal knowledge as to the statements made in paragraphs 3, 4 and 5 of Mr. Bachrach's affidavit and fully endorse them as being true.

Sworn to before me
the 13th day of January, 1976

MR. P. J. N. VAN OS - NOTARIS TE AMSTERDAM -

AFFIDAVIT OF H. EMERY KATZENBACH

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SHAMROCK CORPORATION, Plaintiff,	75 Civ. 1736 (CES)
-against-	
INDIAN HEAD INC., et al., Defendants.	AFFIDAVIT IN SUPPORT OF MOTION

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

L. EMERY KATZENBACH, being duly sworn, states:

1. I am one of the defendants in this action and submit this affidavit in support of the motion made in my behalf seeking summary judgment dismissing the summons and complaint. The facts stated below are asserted upon my personal knowledge except where otherwise stated.

2. During all times in 1973 and 1974 I was Chairman of the Board of Directors of White, Weld & Co. Incorporated ("White, Weld"), investment bankers. White, Weld acted as dealer-manager for Thyssen-Bornemisza Group N.V. ("TBG")

concerning the two tender offers made by TBG for the common stock of Indian Head Inc. ("Indian Head"), the first offer made September 27, 1973 and the second offer made July 12, 1974.

3. During all of 1973 and continuing to and including March 26, 1974, I also was a member of the Board of Directors of Indian Head. During 1973 and that part of 1974 when I served on the Indian Head Board of Directors the Board consisted of at least 17 members and after TBG's initial tender offer the Indian Head Board was increased to 19 members. Except as a member of the Board of Directors, I had no other responsibilities concerning Indian Head. I was not a member of any committee of the Board of Directors nor was I an officer or employee of Indian Head. My responsibility as a director solely encompassed, with the other members of the Board of Directors, overall management of the business and affairs of Indian Head. The actual performance of those duties required my attendance at periodic meetings of the Board of Directors and consultation with various representatives of the management of Indian Head, from time to time, as might be requested by the management.

4. Respecting the first tender offer that was made commencing September 27, 1973 by TBG, I personally first learned of TBG's interest in investment opportunities in the United States in Summer 1973 when TBG engaged White, Weld as investment banker to recommend investment opportunities in the United States. One opportunity subsequently recommended to TBG by White, Weld was that of Indian Head. That recommendation led to negotiations, in some of which I participated, between representatives of TBG and Indian Head which culminated in the Memorandum of Understanding, dated September 19, 1973, between TBG and Indian Head. That Memorandum of Understanding, I was subsequently advised, was approved by the Indian Head Board of Directors at a regular meeting of the Board held on September 25, 1973. I attended the opening of that meeting for a very brief period. Mr. Richard J. Powers, Chairman of the Board, presided and the first item on the agenda was TBG's proposal to make a tender offer. My counsel in this lawsuit advises me that he has examined the minutes of that meeting and that immediately after introduction of this item the minutes state: "Mr. Katzenbach stated that, in view of his position with White, Weld & Co. Incorporated,

he would not participate in the discussion or vote on the proposal and he thereupon withdrew from the meeting." Those minutes accurately state what did occur: namely, I stated because of my position as Chairman of White, Weld I would not participate in the discussion of, or vote on, TBG's proposal to make a tender offer for Indian Head shares. I did leave the meeting at that point, I did not return to the meeting and I did not participate in the discussion or vote concerning the tender offer and the Memorandum of Understanding which, I was subsequently advised, took place after I left the meeting. Moreover, in either of my capacities as Chairman of White, Weld or as a director of Indian Head, I did not participate in any way or at any time in the preparation or approval of any papers concerning the first tender offer that may have been sent to the Indian Head shareholders or filed with the Securities and Exchange Commission. Specifically, I did not participate in the preparation or approval of the formal Offer to Purchase dated September 27, 1973 which is the only document concerning that offer which plaintiff quotes from and alleges is false and misleading (complaint ¶'s 29-32). Moreover, I did not know or have any reason to know at the time, nor do I now

know, that said offer contained untrue statements or omitted material facts.

5. The annual meeting of shareholders of Indian Head is usually scheduled for the last Tuesday in March of each year. In 1974 that meeting was scheduled for and actually held on March 26, 1974. I decided in approximately February 1974 not to stand for re-election as a director of Indian Head and thus my term as a director expired on March 26, 1974. Consequently, as a former director of Indian Head, I had no responsibility for or personal involvement in the 1974 tender offer made by TBG for all of the outstanding shares and warrants of Indian Head, which tender offer commenced on July 12, 1974, almost four months after termination of my position as a director of Indian Head.

6. White, Weld acted as dealer-manager for TBG concerning the 1974 tender offer and I was Chairman of White, Weld during all of 1974. Nevertheless, I did not personally participate in any negotiations which led to said tender offer nor in the preparation or approval of any documents concerning said tender offer that may have been

sent to Indian Head shareholders or warrant holders or filed with the Securities and Exchange Commission. Specifically, I did not participate in the preparation or approval of the formal Offer to Purchase, dated July 12, 1974, which is the only document concerning the 1974 offer which plaintiff quotes from in its complaint and alleges is untrue and misleading (complaint ¶'s 43-46). Moreover, I did not know nor did I have any reason to know at the time, nor do I now know, that said offer contained untrue statements or omitted material facts.

L. Emery Katzenbach

Sworn to before me this 13th day of January 1976.

EXHIBIT 1 - MEMORANDUM OF UNDERSTANDING DATED SEPTEMBER 19, 1973 BETWEEN INDIAN HEAD AND TBG

MEMORANDUM OF UNDERSTANDING
THYSSEN-BORNEMISZA GROUP
and
INDIAN HEAD INC.
19 September 1973

(1) IHD will cooperate with TBG in making a successful offer for a public tender of IHD shares as soon as possible, with the following principal terms:

(a) The offering price shall be $27 per share net.

(b) TBG reserves the right to reject all tenders if less than 750,000 shares are tendered, but may elect to purchase less if it so chooses.

(c) Any shares tendered in excess of 1,100,000 will be rejected on a pro rata basis.

(d) TBG reserves the right to extend the offer.

(2) If TBG purchases not less than 750,000 shares pursuant to the tender offer, and TBG will purchase, IHD will sell for cash to TBG 750,000 shares at the same net price as the tender offer, $27 per share, closing as soon as possible.

(3) Immediately upon purchase of tendered shares, two nominees of TBG will be elected to the Indian Head Board of Directors, one of whom will be a member of the Executive Committee and the Finance Committee. IHD will invite one or more guests from TBG to be present at all of its Board and Executive Committee and Finance Committee meetings to observe and

participate in discussions, but no voting rights other than the designated members.

(4) TBG will keep IHD informed of any plans with respect to public offerings of securities of its presently wholly-owned or affiliated companies, or public offerings of Group shares, and give IHD an opportunity to consider participation in these offerings.

(5) TBG agrees to present and discuss with IHD any business venture or investment that it contemplates in the U.S.A. and to offer IHD first refusal for 30 days to undertake the project. Such discussion will entail sufficient disclosure to enable IHD to conclude if such investment will conflict or compete with IHD's existing or specifically planned business activities. If not, and IHD chooses not to participate, TBG will be free to proceed on its own.

(6) TBG agrees that if it chooses to dispose of all or any part of its IHD shares it will immediately make known this intention and the terms thereof to IHD, and for a maximum period of 60 days IHD will have first refusal to purchase or arrange for the purchase of such shares with an additional 120 days to complete the transaction.

(7) This document contains the basic understanding between the parties. This document will be supplemented by an agreement to be prepared by U.S. counsels representing the parties as soon as possible. The arrangements contemplated herein are subject to approval by the IHD Board of Directors and the IHD stockholders (if required by the NYSE).

Agreed to 19 September 1973
New York, New York

THYSSEN-BORNEMISZA GROUP

By _____

INDIAN HEAD INC.

By _____

Chairman

EXHIBIT 2 - LETTER FROM LAZARD FERES & CO. TO INDIAN HEAD'S BOARD OF DIRECTORS DATED SEPTEMBER 25, 1973

LAZARD FRÈRES & Co.
ONE ROCKEFELLER PLAZA
NEW YORK, N.Y. 10020

CABLE ADDRESS "LAZARD NEW YORK"
TELEPHONE (212) 489-6600

NEW YORK

September 25, 1973

The Board of Directors
Indian Head Inc.
111 West 40th Street
New York, New York 10018

Dear Sirs:

You have advised us that Indian Head Inc. (the "Corporation") desires to raise approximately $20,000,000 of additional capital and to this end it may issue and sell to THYSSEN-BORNEMISZA GROUP, a Netherlands based industrial company (the "Investor"), 750,000 shares of the Corporation's common stock, par value $1, at $27 per share for an aggregate consideration of $20,250,000. You have further advised us that the proceeds will initially be added to working capital and may be applied to the acquisition of businesses in pursuance of the Corporation's program for growth and expansion.

You have advised us that such sale of shares to the Investor is conditioned upon a prior purchase by the Investor of a minimum of 750,000 shares through a tender offer to stockholders at $27 per share, and that through such tender offer the Purchaser may, at its option, acquire up to 1,100,000 shares of common stock.

You have advised us that the Board of Directors has determined that an investment in the Corporation of this magnitude by the Investor, through tender and purchase from the Corporation, is in the best interests of the Corporation and its stockholders.

You have requested us to advise you if, in our judgment, such sale of shares by the Corporation on the terms proposed is in the best interests of the Corporation and its stockholders at this time.

BEST COPY AVAILABLE

On August 4, 1973, there were outstanding approximately 5,041,000 shares of common stock which had an aggregate book value of $119,760,000, or $23.75 per share on that date. This book value reflected at that date $16,078,000, or $3.19 per share of good will arising from the acquisition of businesses. The proposed sale of 750,000 shares will increase the outstanding shares to approximately 5,791,000 shares, a modest dilution of 12.95%.

On September 19, the day prior to the public announcement on September 20 of the proposed sale at $27 per share and of the tender offer to be made at $27 per share, the common stock closed on the New York Stock Exchange at $22.25 per share, a rise of $2.50 above the close of the previous day at $19.75, the approximate level at which the stock had been trading. Given the need for additional equity capital at this time, it is our opinion that under existing market and other economic conditions the sale of 750,000 shares of common stock through a conventional underwritten public distribution would be difficult and possibly not feasible and, in any event, only at a discount below the market price of $20 per share prevailing prior to the September 20 announcement. Were the capital to be raised through a conventional private sale to institutional investors, the price per share could be expected to be a substantial discount below $20 a share. It is our judgment that under these circumstances the raising of $20,000,000 of equity capital through the planned sale to the Investor, as announced, is favorable to the Corporation and its stockholders.

If the Investor acquires 750,000 shares through a tender and the proposed sale to the Investor is consummated, the Investor will own 1,500,000 shares, or 25.90% of the then outstanding shares. If acquisition through tender is increased to 1,100,000 shares, its interest will be increased to 31.94%. You have advised us that after the sale of the shares by the Corporation to the Investor two representatives of the Investor will be elected to the Corporation's Board of Directors, increasing Board membership from seventeen to nineteen Directors.

Based upon the foregoing, it is our opinion that the obtaining of $20,000,000 through sale of stock at $27 a share as a part of the proposed overall plan set forth above, is, from a financing point of view, a transaction made on terms advantageous to the Corporation and its stockholders.

Very truly yours,

EXHIBIT 3 - TBG'S OFFER TO PURCHASE 1.1. MILLION SHARES OF INDIAN HEAD COMMON STOCK, DATED SEPTEMBER 27, 1973 92sa

OFFER TO PURCHASE 1,100,000 SHARES OF COMMON STOCK OF

INDIAN HEAD INC.

by

THYSSEN-BORNEMISZA GROUP N.V.

At $27.00 net per share

THIS OFFER EXPIRES AT 5:00 P.M., EASTERN DAYLIGHT TIME, ON OCTOBER 10, 1973, UNLESS OTHERWISE EXTENDED AS PROVIDED BELOW.

To the Holders of Common Stock of
Indian Head Inc.:

THYSSEN-BORNEMISZA GROUP N.V., a Netherlands Company limited by shares ("TBG"), hereby offers to purchase a minimum of 750,000 shares and a maximum of 1,100,000 shares of Common Stock, $1.00 par value (the "Common Stock"), of INDIAN HEAD INC., a Delaware corporation ("Indian Head"), at $27.00 per share (net to the seller) in cash, upon the terms and conditions set forth in this Offer and in the accompanying Letter of Tender.

1. *Number of Shares.* If 750,000 or more shares of Common Stock are tendered, and remain tendered, TBG will purchase all of such shares properly tendered up to 1,100,000 shares of Common Stock, and may extend this Offer. If fewer than 750,000 shares of Common Stock are tendered, and remain tendered, TBG reserves the right, at its option, to elect (a) to extend this Offer from time to time, during which extension all shares of Common Stock previously tendered and not withdrawn will remain subject to this Offer and may be purchased by TBG, (b) to purchase all shares of Common Stock validly tendered pursuant to this Offer and to extend this Offer, or (c) to terminate this Offer and purchase none or all of the shares of Common Stock duly tendered. If more than 1,100,000 shares of Common Stock are tendered, and remain tendered, during the initial period, purchases will be made from all tendering stockholders, *pro rata* according to the number of shares tendered by each (with appropriate adjustments to avoid the purchase of fractional shares). If this Offer is extended by TBG and TBG purchases shares of Common Stock pursuant to this Offer, TBG may purchase shares tendered during such extension on a first-come, first-served basis.

IMPORTANT

This Offer is subject to the terms and conditions set forth herein and in the Letter of Tender which must be used in accepting this Offer, copies of which may be obtained from the Forwarding Agent, the Soliciting Agent, or the Dealer Manager named below.

Any stockholder of Indian Head wishing to tender all or any portion of his shares should (1) complete and sign the Letter of Tender or a facsimile copy in accordance with the instructions in the Letter of Tender and mail or deliver it with his Indian Head stock certificates to the Forwarding Agent named below, or (2) request his broker, dealer or bank to effect the transaction for him. Each holder of Indian Head Common Stock having shares registered in the name of a broker, dealer or bank nominee should contact his broker, dealer or bank if he desires to tender such shares.

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2. *Acceptance of Offer.* To accept this Offer, certificates for Common Stock, together with a properly executed Letter of Tender in the form accompanying this Offer, with signatures guaranteed, should be tendered by transmittal directly to the Forwarding Agent.

If a stockholder desires to accept this Offer and time will not permit his Letter of Tender to reach the Forwarding Agent at or prior to the time on which this Offer or any extension thereof terminates, such stockholder's acceptance may be effected if his stock certificates, together with a properly executed Letter of Tender in the accompanying form, with signature guaranteed, have been deposited with a member of any national securities exchange, a member of the National Association of Securities Dealers, Inc. ("NASD") or a commercial bank or trust company in the United States, and the Forwarding Agent has received, at or prior to the time on which this Offer or any extension thereof terminates, a notice from such member firm or such commercial bank or trust company setting forth the name of the stockholder, the number of shares tendered and the serial numbers of the certificates representing such Common Stock, and stating that the tender has been made and that the stock certificates, together with the Letter of Tender, have been or will be forwarded by such member firm or such commercial bank or trust company to the Forwarding Agent within eight business days after notice given by the Forwarding Agent that such tender has been accepted. If certificates for Common Stock are tendered in accordance with this paragraph of this Item 2 and purchased pursuant to this Offer, payment for such Common Stock will be made as promptly as practicable after receipt by the Forwarding Agent of such certificates and Letters of Tender.

This Offer and the Letter of Tender will constitute an agreement between the stockholder and TBG, subject to the conditions of this Offer and the Letter of Tender, when the duly executed Letter of Tender, or notice from such member firm or such commercial bank or trust company, is received by the Forwarding Agent.

By executing the Letter of Tender as set forth above, the stockholder will be irrevocably appointing designees of TBG as proxies, effective when, and only to the extent that, TBG purchases the Common Stock tendered by such stockholder; to such extent, all prior proxies appointed by such stockholder will be revoked. Such designees will vote any of the Common Stock as they in their discretion shall deem proper at any annual, special or adjourned meeting of Indian Head's stockholders.

3. *Payment of Purchase Price.* Subject to satisfaction of those certain conditions set forth in Items 1 and 7 below, TBG will purchase Common Stock at $27.00 per share in cash. Payment for all shares duly tendered and purchased pursuant to this Offer will be made by check as soon as practicable after the expiration of the Offer. Certificates for any shares not purchased will be returned without expense to the tendering stockholder as soon as practicable following such expiration. TBG will pay any transfer taxes incident to the transfer of shares to them from tendering stockholders, except as otherwise provided in Instruction 2 of the Instructions to the Letter of Tender.

The quarterly dividend payable to stockholders of record on September 7, 1973 will be paid to such stockholders whether or not they tender pursuant to this Offer.

Sales by Indian Head stockholders pursuant to this Offer may result in taxable gains or losses, and Indian Head stockholders are urged to consult their tax advisers to determine the tax consequences of such sales.

4. *Extension of Tender Period.* TBG reserves the right to extend this Offer from time to time by written notice of such extension to the Forwarding Agent and the Depositary.

5. *Withdrawal of Tender.* Any holder of Common Stock tendering his shares pursuant to this Offer may withdraw his shares at any time prior to October 3, 1973 or at any time after November 24, 1973, unless theretofore purchased by TBG. Indian Head stockholders may not otherwise withdraw tendered shares.

6. *Information Concerning Common Stock.* The Common Stock is traded on the New York Stock Exchange. On September 19, 1973, the last day before the announcement of TBG's intention to make this Offer, the closing price of the Common Stock on the New York Stock Exchange was $22½. On September 25, 1973, the closing price of the Common Stock on the New York Stock Exchange was $24½. Set forth below are the high and low sales prices of the Common Stock on the New York Stock Exchange for the periods indicated:

Year	High	Low
1969	$42½	$22⅜
1970	26	14
1971	33⅝	24¾
1972:		
First Quarter	30¼	25¾
Second Quarter	30⅜	23¾
Third Quarter	29⅜	24⅜
Fourth Quarter	27⅜	22½
1973:		
First Quarter	27½	20⅞
Second Quarter	23	15¼
Third Quarter ..... (through September 25)	24⅞	16⅛

7. *Certain Conditions of Offer.* If Indian Head should issue or authorize the issuance of additional shares of Common Stock, or should issue or authorize the issuance of other securities in respect of, in lieu of, or in substitution for the presently outstanding shares of Common Stock, whether by reclassification, reorganization, conversion, exchange or otherwise, the record date for which occurs after the date hereof and prior to the transfer to TBG's name of the shares purchased under this offer, then TBG shall have the right to adjust appropriately the purchase price per share offered hereby, the number of shares to be purchased, and the fees payable in connection with this Offer, which adjustment shall be conclusive with respect to any shares tendered.

TBG may also withdraw this Offer at its option at any time, and shall not be obligated to purchase any shares of Common Stock tendered pursuant hereto, if any of the following should occur prior to the purchases contemplated under this Offer: (1) any pending or expressly threatened action, suit or proceeding before any court or governmental authority relating to the Offer; (2) a general suspension of trading on, or a general limitation of trading prices imposed by, the New York Stock Exchange, Inc.; (3) any banking moratorium imposed by The Netherlands, the United States of America or the State of New York; or (4) a material adverse change in the condition, financial or otherwise, of Indian Head from that in effect on September 27, 1973, resulting from any action or event not in the ordinary course of business.

8. *Information Concerning TBG.* TBG is a Netherlands company limited by shares and organized on October 5, 1918 under the name Bank voor Handel en Scheepvaart N. V. ("BHS"). BHS' name was changed to its present name on December 31, 1970. (Hereinafter TBG will be used to refer to BHS prior to December 31, 1970 and TBG after that date.) TBG's principal office is located at Prof. E. M. Meijerslaan 1, Amstelveen, The Netherlands.

The principal business of TBG is that of an international industrial holding company. The activities of TBG are mainly in agricultural machinery, light engineering, building materials, shipbuilding, gas transportation and distribution, harbour related activities and Rhineshipping. In addition, TBC has a 25% stock interest in Nederlandse Credietbank N.V., a Netherlands bank located in Amsterdam.

In recent years TBG has launched an acquisition program intended to diversify geographically its operations, which are presently concentrated in The Netherlands and Germany. TBG has also disposed of certain interests which did not conform to current management objectives.

In 1972 TBG achieved a consolidated net profit of Dfls 44.3 million ($17.4 million) (including Dfls 6.3 million ($2.5 million) in extraordinary items). Sales in 1972 for TBG were Dfls 907 million ($356 million) and its share in sales of joint ventures and minority held subsidiaries was Dfls 216 million ($85 million). At December 31, 1972 TBG's consolidated net worth was Dfls 327 million ($128 million) and its long-term debt was Dfls 154.6 million ($66 million). In the figures given above Dutch currency is translated into U. S. dollars at 2.55 guilders ("Dfls") to the dollar.

TBG is a wholly-owned subsidiary of N.V. Hollandsch-Amerikaan. ne Beleggingsmaatschappij-Holland American Investment Corporation ("HAIC"), a Netherlands company limited by shares and organized on November 22, 1926. The principal office of HAIC is located at Coolsingel 6, Rotterdam, The Netherlands. Its principal business activity is that of holding the shares of TBG.

All of the shares of HAIC are held by Familienstiftung Kaszony, a Swiss private foundation formed on December 18, 1926, of which H. H. Thyssen-Bornemisza, Chairman of the Supervisory Board of TBG, is the sole Director and controlling person (the "Trust"). Dr. J. Groh, a Director of HAIC, is the Secretary and only other officer of the Trust. The principal office of the Trust is located at Schwyz, Switzerland. The principal activity of the Trust is that of holding the shares of HAIC.

TBG is managed by its Board of Management under the supervision of its Supervisory Board, which Boards consist of the persons listed below as its Directors. TBG has no officers other than its Secretary and a corporate staff which operate as the officers of TBG. Under Netherlands law, it is not required to have any other officers.

Name	Business Address	Present principal occupation or employment and name, principal business and address of organization by which employed
Supervisory Board		
H. H. Thyssen-Bornemisza	Villa Favorita Castagnola-Lugano Switzerland	Chairman of Supervisory Board, TBG
R. L. Genillard	c/o Clariden Finanz 1 Quai Du Mont Blanc 1211 Geneva 11 Switzerland	Director, White, Weld & Co. Incorporated (Investment Banker) 91 Liberty Street New York, New York Chairman of Board of Directors and Management Committee, White, Weld Trust (Merchant Banker and Investment Banker) Rue Petitat 11 1211 Geneva 1, Switzerland
A. H. Heineken	c/o Heineken N. V. 2E Weteringsplantsoen 21 Amsterdam The Netherlands	Chairman of Board of Management, Heineken N.V. (Breweries) 2E Weteringsplantsoen 21 Amsterdam, The Netherlands
A. A. Jarratt C. B.	c/o International Publishing Corporation Ltd. 33 Holborn London EC1 United Kingdom	Managing Director, International Publishing Corporation Limited (Publishers and Printers) 33 Holborn London EC1, United Kingdom
B. Lippmann	c/o Gerresheimer Glas A.G. Heyestrasse 99 4 Duesseldorf-Gerresheim Germany	Chairman of Board of Management, Gerresheimer Glas A.G. (Glass container manufacturers) Heyestrasse 99 4 Duesseldorf-Gerresheim, Germany

Name	Business Address	Present principal occupation or employment and name, principal business and address of organization by which employed
J. van Meer	c/o Albert Heijn N.V. Ankersmidplein 2 Zaandam, The Netherlands	Member of Board of Management, Albert Heijn N.V. (Supermarkets) Ankersmidplein 2 Zaandam, The Netherlands
H. P. Schär	c/o Ciba-Geigy A.G. Schwarzwaldallee 215 4002 Basel, Switzerland	Member of Executive Committee, Ciba-Geigy A.G. (Pharmaceutical company) Schwarzwaldallee 215 4002 Basel, Switzerland
C. J. Prinz zu Sayn-Wittgenstein-Berleburg	c/o Metallgesellschaft A.G. Reuterweg 14 6 Frankfurt/M, Germany	Vice-Chairman of Board of Management, Metallgesellschaft A.G. (Trader and producers of ores, engineering, transport services, banking and shipping) Reuterweg 14 6 Frankfurt/M, Germany
Board of Management		
G. B. Huiskamp	c/o TBG	Chairman of Board of Management, TBG
H. M. Huchzermeier	c/o Bremer Vulkan Schiffbau und Maschinenfabrik 64-67 Weserstrasse Bremen-Vegesack Germany	Managing Director, Bremer Vulkan Schiffbau und Maschinenfabrik (Shipbuilding) 64-67 Weserstrasse Bremen-Vegesack, Germany Member of Board of Management, TBG
R. Prins	c/o TBG	Member of Board of Management, TBG
E. A. Volckmar	c/o TBG	Member of Board of Management, TBG
Corporate Staff		
H. E. Bachrach	c/o TBG	Head of Department of Planning and Development, TBG
F. W. Freese	c/o TBG	Treasurer, TBG
W. Groenendijk	c/o TBG	Head of Corporate Structure, Legal Affairs and Taxation, TBG
B. van Viegen	c/o TBG	Controller, TBG
A. J. M. Hagenaars	c/o TBG	Secretary, TBG

HAIC is managed by its Board of Directors, which consists of Messrs. H. H. Thyssen-Bornemisza and R. L. Genillard, who are the Chairman and Deputy Chairman, respectively, of TBG, and the persons listed below as Directors. HAIC has no officers; and under Netherlands law, HAIC is not required to have any officers.

Name	Business (Residence) Address	Present principal occupation or employment and name, principal business and address of organization by which employed
Denise Liliane Shorto Thyssen-Bornemisza ...	Villa Favorita Castagnola-Lugano Switzerland	Married to H. H. Thyssen-Bornemisza
Georg-Heinrich Thyssen-Bornemisza	Schloss Werenbag Hausen an Donau Germany	Son of Mr. H. H. Thyssen-Bornemisza
Dr. J. Groh	Via Riviera 14 Castagnola Lugano Switzerland	Administrator to H. H. Thyssen-Bornemisza Villa Favorita Castagnola-Lugano Switzerland

9. *Purpose of this Offer.* TBG intends through the Offer and its agreement with Indian Head referred to below to acquire between 26% and 32% of the issued and outstanding shares of the Common

Stock. Indian Head has agreed that immediately upon purchase of shares pursuant to the Offer, two nominees of TBG will be elected to the Indian Head Board of Directors, one of whom will become a member of the Executive Committee and Finance Committee of the Board of Directors of Indian Head. See Item 12.

TBG does not intend to be involved directly in the day to day business operations and management of Indian Head. On the other hand, TBG does not intend to be merely a passive investor but rather, as a stockholder and through its representation on the Board of Directors and Committees of the Board, it intends to participate and have a significant voice in the formulation of policy and business strategy.

TBG hopes to facilitate business ventures which Indian Head may wish to undertake by offering to make additional investments in Indian Head or otherwise to participate in such ventures. See Item 12.

Except to the extent described above, it is not the present intention of TBG to attempt to acquire control of Indian Head by means of these transactions, nor in its capacity as a major stockholder of Indian Head does TBG now have or intend to develop plans or proposals to liquidate Indian Head, to sell its assets or to merge it with any other person or to make any change in its business, management or corporate structure. TBG does intend to vote its shares in a manner which is intended to benefit all of the stockholders of Indian Head, including TBG.

10. *TBG's Interest in Indian Head.* Except for the arrangements described in Items 9 and 12, none of TBG, HAIC, the Trust and, to the best of their knowledge, no affiliate, associate, officer or director of any of the foregoing owns, directly or indirectly, or has a right to acquire, any shares of the Common Stock; and none of such persons has engaged in any transaction concerning the Common Stock during the last 60 days.

11. *Source and Amount of Funds.* The amount of funds to be used in making purchases of the Common Stock pursuant to the Offer (assuming 1,100,000 shares are purchased) is $29,700,000. The estimated costs in connection with the Offer are $1,100,000. In addition, TBG will pay Indian Head $20,250,000 for the purchase of 750,000 shares of Common Stock directly from Indian Head pursuant to the Agreement referred to in Item 12 below. TBG will pay White, Weld & Co. Incorporated ("White, Weld") a fee of $405,000 for its services in arranging said purchase and for other investment banking services. See also Item 14. Of this amount, all of such funds are to be supplied by TBG out of its general funds.

12. *Position of Indian Head Management and Agreements with Respect to Common Stock.* On September 19, 1973 Indian Head and TBG entered into a Memorandum of Understanding (the "Agreement") providing that Indian Head would cooperate with TBG in making the Offer. Indian Head has directed the transfer agent for the Common Stock to make available to TBG its stockholder list. However, Indian Head has informed TBG that the Board of Directors and management of Indian Head are not making any recommendation to the stockholders as to whether or not they should tender shares under this Offer. The members of the Board own, together with members of their immediate families, approximately 850,000 shares of Common Stock and have indicated that they intend, at the present time, to tender in the aggregate not more than 50,000 of such shares.

The parties agreed that if TBG purchases not less than 750,000 shares pursuant to the Offer, Indian Head will sell, and TBG will purchase, 750,000 additional shares from Indian Head at $27.00 per share. Indian Head also agreed that immediately upon purchase of shares pursuant to this Offer two nominees of TBG will be elected to the Indian Head Board of Directors, one of whom will be a member of the Executive Committee and Finance Committee of the Board of Directors.

TBG agreed to keep Indian Head informed of any plans for public offerings of its shares or shares of its subsidiaries and affiliates and to give Indian Head an opportunity to consider participation in such offerings, and to give Indian Head a right of first refusal with respect to any business venture or investment that TBG contemplates in the United States and with respect to any subsequent disposition by TBG of its Indian Head shares.

In addition, it is understood that J. E. Robison, Chairman of the Finance Committee of Indian Head, will be invited to join the Supervisory Board of TBG.

The Agreement was approved by the Board of Directors of Indian Head on September 25, 1973. The Agreement contemplates, and it is expected, that a supplementary agreement with respect to certain legal matters may be entered into by the parties. It is contemplated that such supplementary agreement will provide that Indian Head will not be obligated to sell shares to TBG if (1) there shall be any pending or expressly threatened action, suit or proceeding before any court or governmental authority relating to the said sale or (2) the purchase of 750,000 shares pursuant to this Offer shall not have taken place before December 1, 1973.

13. *New York Stock Exchange Listing Status.* The Department of Stock List of the New York Stock Exchange has indicated that if the ownership by TBG of Indian Head Common Stock should rise above 32% (or 30%, if 30% or less is purchased pursuant to this Offer and the Agreement referred to above) such additional ownership might ultimately result in the delisting of Indian Head Common Stock from the Exchange. TBG has expressed to Indian Head its commitment that it will consult with Indian Head before taking any action, other than the transactions described in this Offer, which would increase TBG's ownership of Indian Head Common Stock beyond 30% of the outstanding shares. Delisting could also result if the number of persons holding at least 100 shares of Indian Head Common Stock (approximately 4,000 at the present time) should fall below 1,200.

14. *Commissions.* TBG has retained White, Weld to act as Dealer Manager in connection with the Tender Offer. See Item 11. Mr. R. L. Genillard, the Deputy Chairman of the Supervisory Board of TBG, is also a Director of White, Weld. Mr. L. Emery Katzenbach, Chairman of the Board of Directors of White, Weld, is also a Director of Indian Head. Mr. Katzenbach did not vote, as a Director of Indian Head, in connection with the transactions contemplated by the Agreement or the Offer. In addition, in those states where the securities laws require the Tender Offer to be made by a licensed securities dealer, the Offer will be made by White, Weld in such of those states where it is so licensed. For its services, White, Weld will receive a cash fee of 18 cents per share for each share of Common Stock purchased pursuant to the Offer, plus its out of pocket expenses. In addition, TBG will also pay to any broker or dealer (including the Dealer Manager) who is a member of the NASD, a foreign dealer who agrees to conform to the Rules of Fair Practice of such Association and any member of a national securities exchange or any commercial bank or trust company in the United States designated by a tendering stockholder of Indian Head as a soliciting dealer a commission of 55 cents per share of Common Stock tendered and purchased in accordance with the Tender Offer.

TBG has also retained D. F. King & Co., Inc. to assist in solicitation of responses and will pay D. F. King & Co., Inc., a fee of $15,000 plus reasonable out of pocket expenses for its services in soliciting tenders pursuant to the Offer.

15. *Forwarding Agent.* The Chase Manhattan Bank, N.A., New York, New York has agreed to act as Forwarding Agent for any stockholder who tenders his shares. TBG has agreed to pay all reasonable charges and expenses of the Forwarding Agent in connection with this Offer.

16. *Depositary.* Registrar and Transfer Company, Jersey City, New Jersey has agreed to act as the Depositary for the receipt of the tendered shares. TBG has agreed to pay all reasonable charges and expenses of the Depositary in connection with this Offer.

17. *Miscellaneous.* This Offer is not being made to, nor will TBG accept tenders from, holders of shares of Common Stock in any state of the United States or province of Canada in which this Offer or the acceptance thereof would not be in compliance with the securities or blue sky laws of such state or

province. In those states of the United States whose securities laws require this Offer to be made by a licensed broker or dealer, this Offer is made on behalf of TBG by one or more registered brokers or dealers who are licensed under the laws of such states. No dealer or other person has been authorized to give any information or to make any representation on behalf of TBG other than as contained in this Offer to Purchase and the Letter of Tender and the accompanying instructions, and, if any such information or representation is given or made, it must not be relied upon as having been authorized.

Pursuant to Rule 14d-1 of the General Rules and Regulations under the Securities Exchange Act of 1934, as amended, TBG filed with the Securities and Exchange Commission a statement on Schedule 14D furnishing certain additional information with respect to this Offer.

TBG reserves the absolute right to reject any and all tenders not in proper form or to waive any irregularities or conditions of tender, and its interpretation of the terms and conditions of this Offer (including the Instructions to the Letter of Tender) will be final.

The Letter of Tender and certificates for your shares of Common Stock should be sent by you, your broker or bank or trust company to the Forwarding Agent as follows:

(Mailing Address)

The Chase Manhattan Bank, N.A.
Post Office Box 2437
Church Street Station
New York, New York 10015

(Hand Deliveries)

The Chase Manhattan Bank, N.A.
14th Floor
Corporate Agency Department
One New York Plaza
New York, New York

The Soliciting Agent for this Offer is:

D. F. KING & Co., INC.

20 Exchange Place
New York, New York 10005

Two North Riverside Plaza
Chicago, Illinois 60606

The Dealer Manager for this Offer is:

WHITE, WELD & Co. INCORPORATED
One Liberty Plaza
91 Liberty Street
New York, New York 10006

Dated: September 27, 1973

EXHIBIT 4 - SUPPLEMENTARY AGREEMENT DATED OCTOBER 24, 1973, BETWEEN INDIAN HEAD AND TBG

SUPPLEMENT dated as of October 24, 1973, bet[illegible]NDIAN HEAD INC., a Delaware corporation ("IHD"), nd THYSSEN-BORNEMISZA GROUP N.V., a Netherlands company limited by shares ("TBG"), to the Memorandum of Understanding dated September 19, 1973, between said parties.

1. Supplement to Paragraph No. 2 of the Memorandum of Understanding. (a) IHD's agreement with TBG set forth in Paragraph No. 2 of the Memorandum of Understanding was made in reliance upon TBG's representation to IHD, which by its execution of this Supplement it confirms, that TBG is acquiring the shares of Common Stock, $1.00 par value of IHD ("Common Stock"), being purchased by TBG in the Tender Offer made by it, dated September 27, 1973, for the purchase of shares of Common Stock (the "Tender Offer") and from IHD for its own account, for the purpose of investment and not with a view to or for sale in connection with any distribution thereof.

(b) TBG agrees that IHD may cause the legend set forth in Section 3 of this Supplement to be placed on the certificates to be issued to TBG pursuant tc the Tender Offer and Paragraph No. 2 of the Memorandum of Understanding and

may instruct any transfer agent for Common Stock to withhold transfer of any of said shares of Common Stock until assured of compliance with the terms thereof.

2. Supplement to Paragraph No. 6 of Memorandum of Understanding. IHD hereby makes the following commitments with respect to registration under the U.S. Securities Act of 1933, as amended (the "Securities Act"), with respect to all shares of Common Stock owned at any time by TBG:

(a) IHD agrees that within 90 days after the receipt of a written request to do so from TBG made at any time, IHD shall file a registration statement with the Securities and Exchange Commission to register the sale by TBG and/or any subsidiary of TBG to whom it has transferred such shares of Common Stock, in a bona fide public distribution underwritten on a firm commitment basis by a group of underwriters managed by an investment banking firm or firms acceptable to IHD and will use its best efforts to have such registration statement become effective as promptly as practicable after such filing and as requested by TBG and such underwriters; provided, however, that IHD shall be required to effect such registration only once in any one 12 month period; and provided further that if at the time of the receipt of such request, IHD is then in registration (or if IHD has notified TBG that it has bona fide plans to file a registration statement within 30 days) of securities for its own account (or securities other than Common Stock), and the managing underwriter for the offering of the securities

then being registered advises IHD that in the opinion of such underwriter the registration and the distribution of the shares which TBG proposes to sell is likely to adversely affect the distribution of such other securities, or IHD has given the notice required by subsection (b) below, and such shares of Common Stock have been excluded from such registration in accordance with subsection (b) below, then TBG shall withdraw such request, in which event such request may be renewed by TBG at any time in the future after giving IHD and/or such selling stockholders a reasonable period of time to effect such distribution; and provided further that the maximum number of registration statements which may be requested by TBG shall be four, each of which shall be for Common Stock having an estimated offering price of at least $10,000,000 or constituting at least 450,000 of the shares of Common Stock then owned by TBG and its subsidiaries. IHD shall pay, to the extent permitted by law, all the costs and expenses in connection with the preparation and filing of the first and second of such registration statements, including accounting expenses, the cost of printing a reasonable number of registration statements, the fees and expenses of its counsel and filing fees with the Securities and Exchange Commission. TBG shall pay all costs and expenses in connection with any offerings pursuant thereto, including Blue Sky fees and expenses, fees and expenses of TBG's counsel and all underwriting discounts and commissions payable in connection with the offering and sale of such

shares of Common Stock, but excluding the cost of printing a reasonable number of preliminary and final prospectuses, which cost shall be paid by IHD. TBG shall bear all the costs and expenses in connection with the filing of any future registration statements and any offerings made pursuant thereto, including all of the aforementioned, except that IHD shall pay the fees and expenses of its counsel.

(b) Whenever IHD shall determine to file a registration statement under the Securities Act relating to an underwritten public offering of Common Stock, which registration statement includes the shares of other stockholders of IHD, then it shall, at least 30 days prior to such filing, notify TBG in writing of its intention so to do, specifying the date on which it proposes to make such filing. If TBG shall request within 10 days after receipt of such notice the inclusion in such registration statement of a specified number of shares of Common Stock, the Company shall include such shares among the securities covered by such registration statement; provided, however, that if the managing underwriter for the offering of the securities being registered by IHD advises IHD within 10 days after receipt that in the opinion of such underwriter the registration and the distribution of the shares which TBG proposes to sell is likely to adversely affect the distribution of such other securities ~~by IHD~~, then TBG will either withdraw its request or reduce the number of shares which it requested be so registered to an amount acceptable to such managing underwriter; and provided further that IHD may

at any time withdraw or cease proceeding with any such registration on behalf of TBG if it shall have withdrawn or ceased proceeding with registration of such other Common Stock originally proposed to be registered. If IHD is selling securities pursuant to any such registration statement, or if IHD is otherwise paying for all costs and expenses in connection with the preparation and filing of any such registration statement, IHD shall pay all costs and expenses in connection with the preparation and filing of any such registration statement and TBG's offering pursuant thereto to the same extent as set forth in (a) above with respect to the preparation and filing of the first and second registration statements pursuant thereto, except that IHD shall also pay the cost of printing the underwriting agreement and any Blue Sky fees and expenses which shall not be allocable. Otherwise, TBG shall bear its proportionate share of all costs and expenses in connection with the preparation and filing of such registration statements and any offerings pursuant thereto.

(C) IHD agrees to indemnify and hold harmless TBG and each underwriter (within the meaning of the Securities Act) acting in connection with the offering or sale of such shares by TBG pursuant to any registration statement filed pursuant to this Section 2, and each person, if any, who controls (within the meaning of the Securities Act) TBG or such underwriter, against any and all losses, claims, damages, expenses or liabilities, joint or several, to which TBG, such

underwriter or controlling person may become subject under the Securities Act or under any federal or state law, or at common law, or otherwise insofar as such losses, claims, damages, expenses or liabilities arise out of or are based upon an untrue statement or an alleged untrue statement of a material fact contained in any such registration statement, in any related prospectus or in any amendment of, or supplement to, either thereof, or arise out of or are based upon an omission or an alleged omission to state in any thereof a material fact required to be stated therein or necessary in order to make the statements therein not misleading; provided, however, that such indemnity shall not apply to any such loss, claim, damage, expense or liability of TBG or each person, if any, who controls (within the meaning of the Securities Act) TBG, if TBG (or any member of its Supervisory Board, Board of Management, or any officer or employee who has served as a director of IHD or has attended any IHD Board or other meetings), shall know, or have reason to believe, that any such registration statement, prospectus, amendment or supplement contains any such untrue statement or alleged untrue statement or omission or alleged omission; and provided further that such indemnity shall not apply to any such loss, claim, damage, expense or liability arising out of or based upon any such untrue statement or alleged untrue statement or omission or alleged omission made in reliance upon and in conformity with written information furnished to IHD by TBG, such underwriter or controlling person and relating to it or

him, expressly for use in the preparation of such registration statement, related prospectus, amendment or supplement; and provided further that IHD, each person, if any, who controls (within the meaning of the Securities Act) IHD, and the directors of IHD and those of its officers who shall have signed the registration statement shall be indemnified and held harmless by TBG or their underwriters, as the case may be against any and all losses, claims, damages, expenses or liabilities, joint or several, to which IHD or such controlling person, director or officer may become subject under the Securities Act or under any Federal or state law, or at common law, or otherwise insofar as such losses, claims, damages, expenses or liabilities arise out of or are based upon any such untrue statements or alleged untrue statements or omissions or alleged omissions made in reliance upon and in conformity with such information furnished to IHD by TBG or such underwriters.

3. Stock Legend: The following legend shall be placed on all certificates representing shares of Common Stock purchased by TBG in the Tender Offer or pursuant to Paragraph No. 2 of the Memorandum of Understanding:

"Thyssen-Bornemisza Group N.V., the registered holder hereof, has represented to Indian Head Inc. that it has acquired the shares of Common Stock represented by this certificate for investment and not for resale in connection with a distribution. Accordingly, such shares have not been registered under the Securities Act of 1933 of the United States of America, and may not be sold, transferred, pledged

or hypothecated unless subsequently registered under said Act or an exemption from registration is available.

"In addition, the sale, transfer, pledge or hypothecation of this certificate and the shares of Common Stock represented hereby are subject to the terms and conditions of a Memorandum of Understanding dated September 19, 1973, between Thyssen-Bornemisza Group N.V. and Indian Head Inc., which gives Indian Head Inc. (and/or parties designated by it) a right of first refusal with respect to any proposed disposition of said shares. A copy of said Memorandum of Understanding may be examined at the executive offices of Indian Head Inc."

4. Miscellaneous.

(a) Except as hereby supplemented, the Memorandum of Understanding shall remain in full force and effect.

(b) This Supplement shall be construed and interpreted according to the laws of the State of New York.

(c) All communications provided hereinunder shall be made by telegram and by letter which shall be delivered or mailed by registered or certified mail, postage prepaid, as follows:

(1) if to IHD, to Mr. Richard Powers, Indian Head Inc., 1211 Avenue of the Americas, New York, New York 10034, or to such other person at such other place as IHD shall furnish to TBG in writing; and

(2) if to TBG, to Mr. B. H. Huiskamp, Thyssen-Bornemisza Group N.V., Amstelveen, The Netherlands (with a copy to Thomas Joyce, Esq., Shearman & Sterling, 53 Wall Street, New York, New York 10005), or to such other person at such other place as TBG shall furnish to IHD in writing.

IN WITNESS WHEREOF, the parties hereto have caused the supplement to be duly executed as of the date first above written.

INDIAN HEAD INC.

By _____
Chairman

Attest:

_____

THYSSEN-BORNEMISZA GROUP N.V.

By _____

Attest:

_____

Cross Receipts

THYSSEN-BORNEMISZA GROUP N.V., a Netherlands company limited by shares ("TBG"), hereby acknowledges receipt from Indian Head Inc., a Delaware corporation ("IHD"), of a certificate which represents 750,000 shares of Common Stock, $1 par value, of IHD (IHL Common Stock), registered in the name of TBG and dated October 24, 1973.

IHD hereby acknowledges receipt of the sum of $20,250,000 in Federal funds deposited in IHD's account at First National Bank of Boston which represents payment in full for such shares of IHD Common Stock.

Dated: October 24, 1973.

THYSSEN-BORNEMISZA GROUP N.V.

By _____

INDIAN HEAD INC.

By _____
Chairman

OFFER TO PURCHASE ALL OUTSTANDING SHARES OF COMMON STOCK AND WARRANTS TO PURCHASE COMMON STOCK OF

INDIAN HEAD INC.

by

THYSSEN-BORNEMISZA GROUP N.V.

For Cash at

$27 Per Share Net

$2 Per Warrant Net

THIS OFFER EXPIRES AT 5:00 P.M., NEW YORK TIME, ON AUGUST 2, 1974, UNLESS OTHERWISE EXTENDED AS PROVIDED BELOW.

To the Holders of Common Stock and Warrants to Purchase
Common Stock of Indian Head Inc.:

THYSSEN-BORNEMISZA GROUP N.V., a Netherlands Company limited by shares ("TBG"), hereby offers to purchase all outstanding shares of Common Stock, $1.00 par value (the "Common Stock"), of Indian Head Inc. (the "Company") from the holders thereof at $27 per share in cash net to the seller and all the outstanding Warrants to purchase shares of Common Stock of the Company (the "Warrants") from the holders of such Warrants at $2 per Warrant in cash net to the seller, upon the terms and conditions set forth in this Offer and in the accompanying Letter of Tender. As described in Paragraph 17, TBG is also offering to make certain payments to holders of employee stock options in exchange for cancellation of such options. TBG presently owns approximately 34% of the Common Stock of the Company.

1. *Number of Shares and Warrants.* Subject to the terms and conditions set forth herein and in the accompanying Letter of Tender, TBG will purchase all shares of Common Stock and Warrants tendered on or prior to 5:00 P.M. New York time on August 2, 1974 (the "Initial Expiration Date"). According to the Company, at June 28, 1974, there were 5,793,740 shares of Common Stock and 399,255 Warrants outstanding.

2. *Acceptance of Offer.* To accept this Offer, certificates for Common Stock or Warrants, together with a properly executed Letter of Tender in the form accompanying this Offer, with signatures guaranteed, should be tendered by transmittal directly to the Forwarding Agent, The Chase Manhattan Bank, N.A. at the address given on page 11.

IMPORTANT

This Offer is subject to the terms and conditions set forth herein and in the Letter of Tender which must be used in accepting this Offer, copies of which may be obtained from the Forwarding Agent, the Soliciting Agent, or the Dealer Manager named below.

Any holder of Common Stock or Warrants wishing to tender all or any portion of his shares or Warrants should (1) complete and sign the Letter of Tender or a facsimile copy in accordance with the instructions in the Letter of Tender and mail or deliver it with his stock certificates and/or Warrants to the Forwarding Agent named below, or (2) request his broker, dealer or bank to effect the transaction for him. Each holder of Common Stock or Warrants having shares or Warrants registered in the name of a broker, dealer or bank nominee should contact his broker, dealer or bank if he desires to tender such shares or Warrants.

Tenders may be made without the concurrent deposit of stock certificates or Warrants if such tenders are made by or through members of a national securities exchange or by commercial banks or trust companies in the United States. In such cases the Letter of Tender, which must be received prior to the expiration of this Offer, must contain a guarantee by such member, commercial bank or trust company that such certificates or Warrants will be forwarded to the Forwarding Agent no later than ten business days after the expiration of this Offer. Payment for shares or Warrants so tendered and purchased will be made only against deposit of the stock certificates or Warrants and any other required documents. In all other cases the Letter of Tender must be accompanied by the stock certificates or Warrants.

If a stockholder or warrantholder desires to accept this Offer and time will not permit his Letter of Tender to reach the Forwarding Agent before the expiration of the Offer, his tender may be effected if (a) his stock certificates or Warrants (if available), a properly executed Letter of Tender and any other required documents have been deposited with a member of a national securities exchange or with a commercial bank or trust company in the United States and (b) the Forwarding Agent has received prior to the expiration of this Offer a telegram, facsimile transmission or letter from such member, commercial bank or trust company setting forth the name of the stockholder or warrantholder, the number of shares or Warrants tendered and a statement that the tender is being made thereby and guaranteeing that no later than ten business days after the expiration of this Offer the stock certificates or Warrants together with the Letter of Tender and any other required documents, have been or will be forwarded by such member, commercial bank or trust company to the Forwarding Agent. Payment for shares or Warrants so tendered and purchased will be made only against deposit of such certificates or Warrants, Letter of Tender and other required documents.

This Offer and the Letter of Tender will constitute an agreement between the stockholder or warrantholder and TBG, subject to the conditions of this Offer and the Letter of Tender, when the duly executed Letter of Tender, or notice from such member firm or such commercial bank or trust company, is received by the Forwarding Agent.

By executing the Letter of Tender as set forth above, the stockholder will be irrevocably appointing designees of TBG as proxies, effective when, and only to the extent that, TBG purchases the Common Stock tendered by such stockholder; to such extent, all prior proxies appointed by such stockholder will be revoked. Such designees will vote any of the Common Stock as they in their discretion shall deem proper at any annual, special or adjourned meeting of the Company's stockholders.

3. *Payment of Purchase Price.* The purchase of and payment for all shares of Common Stock and Warrants properly tendered prior to 5:00 P.M. on August 2, 1974, will be made by TBG as soon as practicable after that time. The purchase of and payment for all shares of Common Stock and Warrants properly tendered and purchased during any extension of this Offer (if this Offer is extended) will be made as soon as practicable after they shall have been properly tendered. TBG will pay any transfer taxes incident to the transfer to it of duly tendered and purchased shares of Common Stock and Warrants, except as otherwise provided in Instruction 4 of the Instructions to the Letter of Tender.

Sales by the Company's stockholders and warrantholders pursuant to this Offer may result in taxable gains or losses, and the Company's stockholders and warrantholders are urged to consult their tax advisers to determine the tax consequences of such sales.

4. *Extension of Tender Period.* TBG reserves the right to extend this Offer from time to time by notice of such extension to the Forwarding Agent and the Depositary, confirmed in writing as soon as practicable after such notice.

5. *Withdrawal of Tender.* Any holder of Common Stock or Warrants tendering his shares or Warrants pursuant to this Offer may withdraw such shares or Warrants at any time prior to 5:00 P.M.,

New York time on July 22, 1974 or at any time after September 13, 1974, unless theretofore purchased by TBG. The Company's stockholders and warrantholders may not otherwise withdraw tendered shares or Warrants.

6. *Information Concerning the Company.* The Common Stock is traded on the New York Stock Exchange and the Warrants are traded on the American Stock Exchange. Set forth below are the high and low sales prices of the Common Stock on the New York Stock Exchange and the Warrants on the American Stock Exchange for the periods indicated, and the closing price for July 1, the last trading day preceding the date of this Offer in which trading in the Common Stock and Warrants occurred.

	Common Stock		Warrants	
Year	High	Low	High	Low
1969	42½	22⅜	26	8½
1970	26	14	11¼	5½
1971	33⅝	24¾	16	9
1972	30⅜	22½	14⅜	8½
1973:				
First Quarter	27½	20⅞	11⅛	7¼
Second Quarter	23	15¼	8¾	4⅛
Third Quarter	25¾	16⅛	8⅜	5
Fourth Quarter	27	17	7⅞	4¼
1974:				
First Quarter	22¼	17⅝	6	4⅛
Second Quarter	21⅞	17¾	5	3⅞
July 1	23¼	22	4¾	4½

On September 27, 1973, TBG made a tender offer to purchase the Company's Common Stock at $27 per share, which offer continued until October 10, 1973. See Paragraph 10 below. On July 2, 1974, in response to requests for information from the New York Stock Exchange, the Company announced that it had been informed that TBG was considering making a cash tender offer for Common Stock of the Company, and both the New York Stock Exchange and the American Stock Exchange temporarily halted trading pending announcement of TBG's intentions to make this Offer.

Each Warrant entitles the holder thereof to purchase one share of Common Stock at a price of $25.00 per share if exercised on or before May 15, 1975, $30.00 per share if exercised after May 15, 1975 and on or before May 15, 1980, $35.00 per share if exercised after May 15, 1980 and on or before May 15, 1985, and $40.00 per share if exercised after May 15, 1985 and on or before May 15, 1990.

For the six months ended June 1, 1974, the Company reported sales of $291 million, net income of $9.8 million and primary earnings per share of $1.66, compared to sales of $267 million, net income of $8.1 million and primary earnings per share of $1.52 for the six months ended June 2, 1973. For the second quarter ended June 1, 1974, the Company reported sales of $160 million, net income of $6.5 million and primary earnings per share of $1.11 compared to sales of $141 million, net income of $5.2 million and primary earnings per share of $.98 for the three months ended June 2, 1973. The Company has reported that performance in the second quarter was most satisfactory and, based on current forecasts, it believes that results for the second half of fiscal 1974 will compare favorably with the improvement experienced for the year to date. The Company also stated that for both the second quarter and first half of the fiscal year ending November 30, 1974, sales, net income and earnings per share again set new records.

7. *Certain Conditions of Offer.* If the Company should issue or authorize the issuance of additional shares of Common Stock or Warrants, or should issue or authorize the issuance of other securities in respect of, in lieu of, or in substitution for the presently outstanding shares of Common Stock or War-

rants, whether by reclassification, reorganization, conversion, exchange or otherwise, the record date for which occurs after the date hereof and prior to the transfer to TBG's name of the shares or Warrants purchased under this offer, then TBG shall have the right to adjust appropriately the purchase price per share or per Warrant offered hereby, the number of shares or Warrants to be purchased, and the fees payable in connection with this Offer, which adjustment shall be conclusive with respect to any shares or Warrants tendered.

TBG shall not be required to purchase or pay for any shares of Common Stock or Warrants tendered if, before the time of payment therefor:

(A) There shall have been instituted or threatened any action or proceeding before any court or administrative agency, by any government agency or any other person, challenging the acquisition by TBG of the shares or Warrants or otherwise relating to this Offer, or otherwise materially adversely affecting, in the opinion of TBG, the Company or TBG.

(B) There shall have been declared any state of war, national emergency, banking moratorium or suspension of payments by banks in the United States or in The Netherlands, or imposition of, or changes in, any currency or exchange control laws or regulations of the United States or The Netherlands or general suspension of trading on the New York or American Stock Exchange, or

(C) There shall have been a material change in the business, financial condition or operations of the Company and its subsidiaries, taken as a whole,

which, in the opinion of TBG, makes it inadvisable to proceed with the purchase or payment.

If the Company declares any dividend payable to stockholders of record on a date between July 12, 1974 and the date when shares purchased by TBG are transferred of record, the Letter of Tender provides that the dividend on such shares shall be payable to TBG or may be deducted by TBG from the purchase price of such shares.

8. *Information Concerning TBG.* TBG is a Netherlands company limited by shares and organized on October 5, 1918 under the name Bank voor Handel en Scheepvaart N. V. ("BHS"). BHS' name was changed to its present name on December 31, 1970. (Hereinafter TBG will be used to refer to BHS prior to December 31, 1970 and TBG after that date.) TBG's principal office is located at Prof. E. M. Meijerslaan 1, Amstelveen, The Netherlands.

The principal business of TBG is that of an international industrial holding company. The activities of TBG are mainly in agricultural machinery, light engineering, building materials, shipbuilding, natural and liquified gas transportation and distribution, harbour related activities and Rhineshipping. In addition, TBG has a 25% stock interest in Nederlandse Credietbank N.V., a Netherlands bank located in Amsterdam.

In recent years TBG has launched an acquisition program intended to diversify geographically its operations, which had been concentrated in The Netherlands and in Germany prior to the acquisition of Common Stock of the Company discussed in Paragraph 10 below. TBG has also disposed of certain interests which did not conform to current management objectives.

In 1972 TBG achieved a consolidated net profit of Dfls. 44.3 million ($15.8 million) (including Dfls. 6.3 million ($2.25 million) in extraordinary items). Sales in 1972 for TBG were Dfls. 907 million ($324 million) and its share of sales in joint ventures and minority held subsidiaries were Dfls. 216 million ($77 million). At December 31, 1972, the consolidated net worth was Dfls. 327 million ($117 million) and the long-term debt was Dfls. 154.6 million ($55.2 million). In 1973 TBG achieved a consolidated net profit of Dfls. 58.9 million ($20.89 million) (including Dfls 0.1 million ($35,460) in extraordinary items). Sales in 1973 for TBG were Dfls. 901 million ($319.5 million) and its share of sales in joint ventures and minority held subsidiaries were Dfls. 248 million ($87.9 million). At December 31, 1973 the consolidated net worth of TBG was Dfls. 413.5 million ($146.6 million) and the long

term debt was Dfls. 122.2 million ($43.3 million). In the figures given above Dutch currency is translated into U.S. dollars at 2.82 guilders ("Dfls.") to the dollar, the exchange rate in effect on December 31, 1973. The consolidated net profit for 1973 includes profit attributable to operations of the Company for the period between the date of TBG's acquisition of its interest in the Company (October 10, 1973) and the end of the Company's fiscal year (December 1, 1973). The amount of TBG's sales in 1973 does not include sales of the Company.

TBG is a wholly-owned subsidiary of N.V. Hollandsch-Amerikaansche Beleggingsmaatschappij-Holland American Investment Corporation ("HAIC"), a Netherlands company limited by shares and organized on November 22, 1926. The principal office of HAIC is located at Weena 723, Rotterdam, The Netherlands. Its principal business activity is that of holding the shares of TBG.

All the shares of HAIC are held by Familienstiftung Kaszony, a Swiss private foundation formed on December 18, 1926, of which H. H. Thyssen-Bornemisza, Chairman of the Supervisory Board of TBG, is the sole Director and controlling person (the "Trust"). Dr. J. Groh, a Director of HAIC, is the Secretary and only other officer of the Trust. The principal office of the Trust is located at Schwyz, Switzerland. The principal activity of the Trust is that of holding the shares of HAIC.

TBG is managed by its Board of Management under the supervision of its Supervisory Board, which Boards consist of the persons listed below as its Directors. TBG has no officers other than its Secretary and a corporate staff which operate as the officers of TBG. Under Netherlands law, it is not required to have any officers.

Name	Business Address	Present principal occupation or employment and name, principal business and address of organization by which employed
Supervisory Board		
H. H. Thyssen-Bornemisza	Villa Favorita Castagnola-Lugano Switzerland	Chairman of Supervisory Board, TBG
R. L. Genillard	c/o Société anonyme financiere du Credit Suisse et de White Weld 1 Quai Du Mont Blanc 1211 Geneva 1 Switzerland	Chairman of Board of Directors and Management Committee, Société anonyme financiere du Credit Suisse et de White Weld (Merchant Banker and Investment Banker) Rue Petitat 11 1211 Geneva 1, Switzerland Director and Vice Chairman of the Board White Weld Holdings, Inc. (Investment Banking) One Liberty Plaza, 91 Liberty Street New York, New York
A. H. Heineken	c/o Heineken N. V. 2E Weteringsplantsoen 21 Amsterdam The Netherlands	Chairman of Board of Management, Heineken N.V. (Breweries) 2E Weteringsplantsoen 21 Amsterdam, The Netherlands
A. A. Jarratt C. B.	c/o International Publishing Corporation Ltd. 33 Holborn London EC1 United Kingdom	Managing Director, International Publishing Corporation Limited (Publishers and Printers) 33 Holborn London EC1, United Kingdom
B. Lippmann	c/o Gerresheimer Glas A.G. Heyestrasse 99 4 Duesseldorf-Gerresheim Germany	Chairman of Board of Management, Gerresheimer Glas A.G. (Glass container manufacturers) Heyestrasse 99 4 Duesseldorf-Gerresheim, Germany

Name	Business Address	Present principal occupation or employment and name, principal business and address of organization by which employed
J. van Meer	c/o Ahold N.V. Ankersmidplein 2 Zaandam, The Netherlands	Member of Board of Management, Albert Heijn N.V. (Supermarkets) Ankersmidplein 2 Zaandam, The Netherlands
H. P. Schär	c/o Ciba-Geigy A.G. Klybeckstrasse 141 4002 Basel, Switzerland	Member of Executive Committee, Ciba-Geigy A.G. (Chemical company) Klybeckstrasse 141 4002 Basel, Switzerland
C. J. Prinz zu Sayn-Wittgenstein-Berleburg	c/o Metallgesellschaft A.G. Reuterweg 14 6 Frankfurt/M, Germany	Vice-Chairman of Board of Management, Metallgesellschaft A.G. (Trader and producers of ores, engineering, transport services, banking and shipping) Reuterweg 14 6 Frankfurt/M, Germany
James E. Robison	c/o Indian Head Inc. 1211 Avenue of Americas New York, New York 10036	Chairman of Finance Committee of Indian Head Inc. (Diversified industrial corporation) 1211 Avenue of Americas New York, New York 10036
Board of Management		
G. B. Huiskamp	c/o TBG	Chairman of Board of Management, TBG
H. M. Huchzermeier	c/o Bremer Vulkan Schiffbau und Maschinenfabrik 64-67 Weserstrasse Bremen-Vegesack Germany	Managing Director, Bremer Vulkan Schiffbau und Maschinenfabrik (Shipbuilding) 64-67 Weserstrasse Bremen-Vegesack, Germany Member of Board of Management, TBG
R. Prins	c/o TBG	Member of Board of Management, TBG
E. A. Volckmar	c/o TBG	Member of Board of Management, TBG
H. E. Bachrach	c/o TBG	Member of Board of Management, TBG
Corporate Staff		
F. W. Freese	c/o TBG	Treasurer, TBG
W. Groenendijk	c/o TBG	Head of Corporate Structure, Legal Affairs and Taxation, TBG
B. van Viegen	c/o TBG	Controller, TBG
A. M. F. Wasmoeth	c/o TBG	Head of Personnel and Management Development Department, TBG
L. J. M. Pijnenburg	c/o TBG	Secretary & Counsel, TBG

HAIC is managed by its Board of Directors, which consists of Messrs. H. H. Thyssen-Bornemisza and R. L. Genillard, who are the Chairman and Deputy Chairman, respectively, of TBG, and the persons listed below as Directors. HAIC has no officers; and under Netherlands law, HAIC is not required to have any officers.

Name	Business (Residence) Address	Present principal occupation or employment and name, principal business and address of organization by which employed
Denise Liliane Shorto Thyssen-Bornemisza ...	Villa Favorita Castagnola-Lugano Switzerland	Wife of H. H. Thyssen-Bornemisza
Georg-Heinrich Thyssen-Bornemisza	Schloss Werenbag Hausen an Donau Germany	Son of H. H. Thyssen-Bornemisza
Dr. J. Groh	Via Riviera 14 Castagnola-Lugano Switzerland	Administrator to H. H. Thyssen-Bornemisza Villa Favorita Castagnola-Lugano Switzerland

9. *Purpose of This Offer.* TBG expects to purchase a substantial majority of the Common Stock as a result of this Offer and thereby acquire control of the Company. TBG believes the Company to be well managed and to present an attractive long-term investment opportunity. TPG presently does not have any plans or proposals to make any major changes in the Board of Directors, management, corporate structure, operating policies or business of the Company or to suggest its liquidation, the sale of its assets or a merger with any other person. However, it reserves the right to make changes in the future should it determine that the best interests of the Company and its stockholders are served thereby.

TBG anticipates that promptly after the Initial Expiration Date it will transfer the shares purchased or to be purchased pursuant to this Offer to Thyssen-Bornemisza Inc. (TBI), a wholly owned U.S. subsidiary which will assume the obligations for all borrowings incurred or to be incurred under the revolving credit agreement described in Paragraph 11. Such transfer will not in any manner relieve TBG of its obligations under this Offer. It is TBG's intention to acquire, directly or through TBI, stock having more than 80% of the voting control of the Company, either through this Offer or as a result of purchases made at some future date as indicated in the next paragraph. In the event TBG so acquires 80% of the voting control of the Company, it expects to transfer to TBI all its stock in the Company which it then owns. TBI anticipates that it would then file consolidated income tax returns with the Company in which the tax losses of TBI arising from deductions for interest and other expenses of TBI would be applied against the Company's income, thus reducing the tax that would otherwise be payable by the Company. In such event, TBI would expect the Company to pay to it the amount which it would have had to pay in taxes if the consolidated tax returns with TBI were not filed.

At some future time or times not presently determinable TBG may purchase or otherwise acquire additional shares of the Common Stock or other securities of the Company outstanding after the completion of this Offer for the purpose of obtaining 80% of the voting control of the Company or otherwise. Except as indicated in the preceding paragraph, there is no present plan to make any such purchases or acquisitions. Such purchases or acquisitions could be made in the open market, through private negotiations or by means of a tender offer or a merger between the Company and a subsidiary of TBG.

10. *TBG's Interest in the Company.* TBG presently owns 1,963,619 shares (approximately 34%) of the outstanding Common Stock of the Company. 1,213,619 of these shares were acquired for $27 per share pursuant to a tender offer made in September 1973 and the remaining 750,000 shares were purchased for $27 per share directly from the Company upon consummation of the tender offer pursuant to a Memorandum of Understanding between TBG and the Company.

Pursuant to the Memorandum of Understanding, TBG agreed to give the Company a right of first refusal with respect to any business venture or investment that TBG contemplates in the United States.

In addition, the Company agreed, subject to certain conditions, to file, at the request of TBG, a registration statement under the Securities Act of 1933 with respect to the shares of Common Stock TBG presently owns. TBG has also agreed to keep the Company informed of any plans for public offerings of TBG's shares or shares of its subsidiaries and affiliates and to give the Company an opportunity to consider participation in such offerings.

Mr. G. B. Huiskamp, Chairman of the Board of Management of TBG, is a member of the Board of Directors of the Company and of the Executive and Finance Committees of the Company. Mr. H. E. Bachrach, Member of the Board of Management, is a member of the Company's Board of Directors. Messrs. Huiskamp and Bachrach did not vote, as Directors of the Company, in connection with the transactions contemplated by the Offer. Mr. James E. Robison, Chairman of the Company's Finance Committee, is a member of TBG's Supervisory Board. Mr. Robison did not vote, as a member of such Board, in connection with the transactions contemplated by the Offer.

Mr. Robison owns (prior to intended gifts and transfers) 260,835 shares of the Company's Common Stock and Warrants to acquire an additional 27,100 shares. In addition, associates of Mr. Robison own 7,200 shares of Common Stock and Warrants to acquire an additional 600 shares.

Except for TBG's interest in the Company described in this paragraph, none of TBG, HAIC, the Trust and, to the best of their knowledge, no affiliate, associate, officer or director of any of the foregoing owns, directly or indirectly, or has a right to acquire, any shares of the Common Stock or Warrants; and none of such persons has engaged in any transaction concerning the Common Stock or Warrants during the last 60 days.

11. *Source and Amount of Funds.* The amount of funds to be used in making purchases of the Common Stock and Warrants pursuant to this Offer (assuming all outstanding shares of Common Stock not presently owned by TBG and all outstanding Warrants are purchased and assuming no shares of Common Stock resulting from the conversion of the Company's Series A Preferred Stock and Convertible Subordinated Debentures are purchased) is $105,121,777, excluding fees and expenses. In addition, a maximum of approximately $910,000 may be payable to holders of employee stock options pursuant to the offer described in Paragraph 17. Up to a maximum of $50,000,000 of such funds are to be supplied by long term borrowings pursuant to a long term borrowing facility in the form of a 7-year multi-currency revolving credit agreement dated December 19, 1973 with The Chase Manhattan Bank, N.A. and fourteen other banks located outside the United States. Under the agreement, borrowings are unsecured and are made at floating interest rates from ¾ to ⅞ of 1% above the London interbank offered rate quoted in the London Eurocurrency Market. The remaining portion of the required funds will be supplied by TBG out of its general funds, which consist of cash, overdraft facilities and unsecured short term borrowings used for working capital purposes. TBG expects to continue to make use of these facilities and borrowings for working capital purposes in the future.

12. *Position of the Company's Management and Board of Directors with Respect to the Offer.* The Company has advised TBG that it will cooperate with TBG in making the Offer to the extent of directing the transfer agent for the Common Stock and Warrants to make available to TBG its list of stockholders and warrantholders and to mail the Offer to the stockholders and warrantholders at TBG's expense. However, the Company has informed TBG that the Board of Directors and management of the Company are not making any recommendation to the stockholders and warrantholders as to whether or not they should tender shares or Warrants under this Offer. Set forth below as to certain directors of the Company are (i) the number of shares of Common Stock now owned by such directors and their associates (after giving effect to proposed gifts and transfers to family members), (ii) the approximate number of shares which they presently propose to tender to TBG and (iii) the approximate number of shares proposed to be retained after such tender. The figures are based upon the present intentions of the directors and their estimates of the actions to be taken by their associates; there can be no assurance that the directors or associates will tender the shares indicated. The directors and their associates may upon further

consideration tender more or less shares. As used above, associates include the director's wife, minor children, any relative sharing his home and any trust in which the director or any of the foregoing has a substantial beneficial interest. Messrs. Powers and Robison, the only directors who own Warrants, have indicated their intention not to tender their Warrants.

	Owned (after Proposed Gifts and Transfers)	To be Tendered	To be Retained
James M. Flack	94,524	64,524– 84,524	30,000– 10,000
Andrew Kalman	116,184	80,000–100,000	36,184– 16,184
Paul W. McAlister	71,343	50,000– 60,000	21,343– 11,343
John E. O'Sullivan	33,624	20,000– 30,000	13,624– 3,624
Richard J. Powers	17,325	8,000– 11,000	9,325– 6,325
James E. Robison	263,152	80,000–100,000	183,152–163,152
Robert M. Schwarzenbach	73,724	30,000– 50,000	43,724– 23,724
Marshall F. Smith	4,623	0– 2,300	4,623– 2,323

13. *Stock Exchange Listing Status.* Depending upon the number of shares tendered and purchased pursuant to this Offer, the Common Stock may no longer meet the requirements of the New York Stock Exchange for continued listing and the Exchange may, therefore, delist the shares. Published guidelines of the Exchange indicate that it would consider delisting the Common Stock if the number of publicly held shares was less than 600,000 or if there were fewer than 1200 holders of 100 or more shares (i.e. round lot holders). Moreover, in connection with the purchase by TBG of its present holdings of Common Stock as described in Paragraph 10, the Exchange stated that it would review the continued listing of the Common Stock in the event TBG acquired any additional shares of Common Stock. In such a review, the staff of the Exchange indicated that it would probably commence action to delist the Common Stock even if the guidelines set forth above are met. TBG cannot predict whether any action commenced by the staff of the Exchange to delist the Company's Common Stock would be successful or what effect delisting would have on the market for the Common Stock. Registration of the Common Stock under the Securities Exchange Act of 1934 may be terminated if the Common Stock is delisted and there are fewer than 300 holders of record of shares of the Common Stock. Such termination would substantially reduce the information required to be furnished by the Company to its stockholders.

Published guidelines of the American Stock Exchange indicate that the Exchange will consider delisting the Warrants if (i) the number of Warrants publicly held (exclusive of management and other concentrated holdings) is less than 200,000, (ii) the total number of warrantholders is less than 600 or if the number of holders of 100 Warrants or more is less than 400, or (iii) the aggregate market value of Warrants publicly held (exclusive of management and other concentrated holdings) is less than $1,000,000.

14. *Solicitation and Other Fees.* TBG will pay to any broker or dealer (including the Dealer-Manager) who is a member of any national securities exchange or of the National Association of Securities Dealers, Inc. ("NASD"), or any nonmember foreign broker or dealer ineligible for membership in the NASD who agrees to conform to the Rules of Fair Practice of such Association in making solicitations in the United States to the same extent as though it were a member thereof, or any commercial bank or trust company ("Soliciting Dealer"), whose name and address appear in the space provided therefor in a Letter of Tender and who has solicited the tender to which such Letter of Tender relates (including any Soliciting Dealer in respect of shares properly tendered for its own account or for the account of any broker or dealer), a solicitation fee of 45¢ per share of Common Stock tendered and purchased in accordance with this Offer and the Letter of Tender. No solicitation fee will be paid with respect to the tender of Warrants.

White, Weld & Co. Incorporated ("White, Weld") is acting as Dealer-Manager in connection with this Offer and will receive from TBG a fee of 17¢ per share for each share of Common Stock purchased pursuant to this Offer (in addition to any fees received by it as a Soliciting Dealer) and will be reimbursed for certain out-of-pocket expenses in connection therewith. TBG has also agreed to indemnify White, Weld and the Soliciting Dealers against certain civil liabilities which may arise in connection with this Offer. Mr. R. L. Genillard, the Deputy Chairman of the Supervisory Board of TBG, is also a Director and Vice Chairman of the Board of White Weld Holdings, Inc., the parent corporation of White, Weld. In those states where the securities laws require the Offer to be made by a licensed dealer, the Offer will be made by White, Weld in such of those states where it is so licensed.

D. F. King & Co., Inc. has been retained by TBG to aid in soliciting tenders of shares of Common Stock and Warrants pursuant to this Offer and will receive reasonable and customary compensation from TBG for services relating to this Offer and will be reimbursed for certain out-of-pocket expenses in connection therewith.

15. *Forwarding Agent.* The Chase Manhattan Bank, N.A., New York, New York, has agreed to act as Forwarding Agent for any stockholder or warrantholder who tenders his shares or Warrants. TBG has agreed to pay all reasonable charges and expenses of the Forwarding Agent in connection with this Offer.

16. *Depositary.* The First Jersey National Bank, One Exchange Place, Jersey City, New Jersey has agreed to act as the Depositary for the receipt of the tendered shares and Warrants. TBG has agreed to pay all reasonable charges and expenses of the Depositary in connection with this Offer.

17. *Offer to Holders of Employee Stock Options.* Subject to the terms and conditions of Paragraph 7, TBG hereby offers to pay to each holder of employee stock options issued by the Company, and outstanding on the date of this Offer, a net amount in cash equal to the excess of the tender price of $27 per share (as adjusted pursuant to Paragraph 7) over the exercise price per share of such holder's options. Each optionee may receive this payment by depositing with the Company, on or prior to the expiration date of this Offer, an agreement cancelling his options. Forms of such agreement are available to optionees from Richard J. Cutler, Vice President and General Counsel of the Company, at the Company's offices at 1211 Avenue of the Americas, New York, New York, telephone number 212-764-3257. This offer is made to all holders of stock options with exercise prices of less than $27 per share (covering approximately 119,102 shares) irrespective of whether their options are presently exercisable. Optionees are urged to consult with counsel concerning the legal and tax consequences of the offer contained in this Paragraph 17.

18. *Stock Purchase Plan.* TBG has been informed that the Company's Employees Stock Purchase Plan will be amended so that participants under the Plan will be able to authorize the shares in their accounts under the Plan to be tendered by the Trustee of the Plan.

19. *Miscellaneous.* This Offer is not being made to, nor will TBG accept tenders from, holders of shares of Common Stock or Warrants in any state of the United States or province of Canada in which this Offer or the acceptance thereof would not be in compliance with the securities or blue sky laws of such state or province. In those states of the United States whose securities laws require this Offer to be made by a licensed broker or dealer, this Offer is made on behalf of TBG by one or more registered brokers or dealers who are licensed under the laws of such states. No dealer or other person has been authorized to give any information or to make any representation on behalf of TBG other than as contained in this Offer to Purchase and the Letter of Tender and the accompanying Instructions, and, if any such information or representation is given or made, it must not be relied upon as having been authorized.

Pursuant to Rule 14d-1 of the General Rules and Regulations under the Securities Exchange Act of 1934, as amended, TBG filed with the Securities and Exchange Commission a statement on Schedule 13D furnishing certain additional information with respect to this Offer.

TBG reserves the absolute right to reject any and all tenders not in proper form or to waive any irregularities or conditions of tender, and its interpretation of the terms and conditions of this Offer (including the Instructions to the Letter of Tender) will be final.

The Letter of Tender and certificates for your shares of Common Stock and Warrants should be sent by you, your broker or bank or trust company to the Forwarding Agent as follows:

(Mailing Address)

The Chase Manhattan Bank, N.A.
Post Office Box 2437
Church Street Station
New York, New York 10015

(Hand Deliveries)

The Chase Manhattan Bank, N.A.
14th Floor
Corporate Agency Department
One New York Plaza
New York, New York

The Soliciting Agent for this Offer is:

D. F. KING & Co., INC.

20 Exchange Place
New York, New York 10005
(212) 269-5550

Two North Riverside Plaza
Chicago, Illinois 60606
(312) 236-5831

The Dealer Manager for this Offer is:

WHITE, WELD & Co. INCORPORATED
One Liberty Plaza
91 Liberty Street
New York, New York 10006
(212) 285-2600

Dated: July 12, 1974

Any questions or requests for assistance may be directed to White, Weld & Co. Incorporated, the Dealer-Manager, or to D. F. King & Co., Inc., at their respective telephone numbers and locations listed above. You may also contact your local broker, dealer, commercial bank or trust company for assistance concerning this Offer.

AMENDED COMPLAINT (Filed March 4, 1976) 121sa

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SHAMROCK CORPORATION, Individually, and on behalf of all holders of Common Stock and Warrants of Indian Head Inc., similarly situated,

Plaintiff,

-against-

INDIAN HEAD INC.; THYSSEN-BORNEMISZA GROUP N.V.; THYSSEN-BORNEMISZA INC.; WHITE, WELD & CO., INCORPORATED; RICHARD J. POWERS; JAMES E. ROBISON; HERBERT E. BACHRACH; GERALD B. HUISKAMP; L. EMERY KATZENBACH; MARSHALL F. SMITH; H. H. THYSSEN-BORNEMISZA; R. L. GENILLARD; THYSSEN-BORNEMISZA HOLDINGS, INC., and CHEMICAL BANK,

Defendants.

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75 Civ. 1736 (CES)

AMENDED COMPLAINT

CLASS ACTION

Plaintiff, by its attorneys, WOLF HALDENSTEIN ADLER FREEMAN HERZ & FRANK, alleges on information and belief, except as to paragraph 4 which it alleges upon knowledge:

JURISDICTION

1. This action arises under Sections 10(b) and 14(e) of the Securities Exchange Act of 1934 [15 U.S.C. 78(j) and 78(e)], Rule 10b-5 promulgated by the Securities and Exchange Commission and principles of common law.

2. This Court has jurisdiction of the action by virtue of Section 27 of the Securities Exchange Act of 1934 [15 U.S.C. 78aa] and pendant jurisdiction.

3. The acts alleged herein occurred in substantial part within the Southern District of New York.

THE PARTIES AND SECURITIES

4. Plaintiff is a Virginia corporation. At all times hereinafter mentioned it has been the holder of Warrants to purchase 6,200 shares of the $1.00 per value Common Stock of Indian Head Inc. (respectively, "Warrants" and "Common Stock"). The Warrants were originally issued in May, 1965 as part of an offering of convertible debentures and Warrants. By their terms, the Warrants are exercisable through May 15, 1990. The exercise price of the Warrants is now $30.00 per share of Common Stock. (When issued, the Warrants were exercisable at $20.00 per share of Common Stock. They provided for $5.00 increases in exercise price every five years through 1985). If the merger of Indian Head Inc., discussed below, is consummated, the holders of Warrants, on the exercise of Warrants, will receive $30.00, cash. Since approximately September 1973, plaintiff has been the holder of 10 shares of Common Stock.

5. Defendant Indian Head Inc. ("Indian Head"), the issuer of the securities underlying this action, is a Delaware corporation. Its principal place of business is in New York, New York.

6. Defendant Thyssen-Bornemisza Group N.V. ("TBG") is a Netherlands company limited by shares. Its principal office is in Amstelveen, The Netherlands. It is a holding company which made two tender offers for Indian Head securities, the first for Common Stock and the second for Common Stock and Warrants which, as hereinafter alleged, were made by the use of untrue and misleading statements of material facts and by the omission of material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading and which,

after the First Tender Offer, purchased 750,000 shares of the Common Stock from Indian Head. It owns all the issued and outstanding stock of Thyssen-Bornemisza, Inc. and controls it.

7. Defendant Thyssen-Bornemisza Inc. ("TBI") is a Maryland corporation. It is a wholly owned subsidiary of TBG. It acquired from TBG and now owns approximately 90% of Indian Head's outstanding Common Stock. It owns all the issued and outstanding Stock of Thyssen-Bornemisza Holdings, Inc. and controls it.

8. Defendant Thyssen-Bornemisza Holdings, Inc. ("TBH") is a wholly owned subsidiary of TBI which was organized for the express purpose of having Indian Head merged into it.

9. Defendant H. H. Thyssen-Bornemisza is an individual residing in Switerland. He controls TBG through ownership of Familienstiftung Kaszony, a Swiss private foundation which owns all the shares of N.V. Hollandsch-Amerikaansche Beleggingsmaatschappij-Holland American Investment Corporation, a Netherlands company, whose principal business activity is holding all of the shares of TBG. He was at all times hereinafter mentioned Chairman of the Supervisory Board of TBG.

10. Defendant White, Weld & Co., Incorporated ("White, Weld") is a corporation whose principal office is in New York, New York. It is a broker-dealer in securities and a member firm of the New York Stock Exchange and the American Stock Exchange.

11. Defendant R. L. Genillard was at all times hereinafter mentioned the Deputy Chairman of the Supervisory Board of TBG, and until approximately July, 1974, a Director of White, Weld. Since approximately July, 1974, he has been Vice Chairman of the Board of White, Weld Holdings, Inc., the parent of White, Weld.

12. Defendant L. Emery Katzenbach was at all times hereinafter mentioned Chairman and a member of the Board of White, Weld, and between approximately 1971 and March, 1974 he was a member of the Board of Directors of Indian Head.

13. Defendant James E. Robison has been a member of the Board of Directors and Executive Committee, and Chairman of the Finance Committee, of Indian Head at all times hereinafter mentioned. In addition, he has been a member of the Supervisory Board of TBG since approximately October, 1973.

14. Defendants Herbert E. Bachrach and Gerald B. Huiskamp have been members of the Board of Directors of Indian Head since approximately October, 1973. At all times hereinafter mentioned they have been members of the Board of Management of TBG. They have been officers and directors of TBI since approximately September 11, 1973.

15. Defendant Richard J. Powers has been Chairman of the Board of Directors of Indian Head at all times hereinafter mentioned.

16. Defendant Marshall F. Smith has been President and Chief Operating Officer of Indian Head and a member of its Board of Directors since approximately February 26, 1974.

17. Defendant Chemical Bank is a New York corporation. It is Indian Head's Warrant Agent pursuant to an

Agreement dated as of May 15, 1965 entered into between Indian Head and Chemical Bank.

CLASS ACTION

18. Each claim herein is brought as a class action pursuant to Rule 23 (b) (3) of the Federal Rules of Civil Procedure. The Class consists of all persons who owned Common Stock or Warrants at the time of the wrongs complained of herein, except the defendants, persons affiliated and associated with the defendants and members of the immediate families of each of the individual defendants.

19. Plaintiff is a member of the Class. Its claims are typical of the claims of all Class members. It will fairly and adequately protect the interests of the Class.

20. The members of the Class are so numerous, in excess of 1,000, that joinder of all members if impracticable.

21. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. There are questions of law and fact involved herein which are common to the Class and which predominate over any questions affecting individual members of the Class. The common questions include:

(a) Whether TBG's tender offer for Common Stock dated September 27, 1973, contained untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading;

(b) Whether TBG's tender offer for Common Stock and Warrants, dated July 12, 1974, contained untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading;

(c) Whether the defendants committed fraudulent, deceptive or manipulative acts or practices in connection with either or both tender offers or the acquisition of 750,000 shares of Common Stock from Indian Head after the successful completion of the First Tender Offer;

(d) Whether Indian Head and the individual defendants who were directors of Indian Head breached a duty owed to the holders of Common Stock or Warrants to not engage in transactions which substantially impaired their value;

(e) Whether defendants TBG, H.H. Thyssen-Bornemisza and R. L. Genillard induced or aided and abetted Indian Head and the individual defendants who were directors of Indian Head in the aforementioned breach of duty;

(f) Whether defendants TBI, TBG, H.H. Thyssen-Bornemisza and R. L. Genillard, as the persons controlling Indian Head after October 10, 1973, breached a duty owed to the members of the Class to not engage in transactions which substantially impaired the value of their securities;

(g) Whether the tender offers made by TBG resulted in the substantial impairment of the value of the Warrants or Common Stock;

(h) Whether the proposed merger of Indian Head into TBH constitutes a fraudulent, deceptive or manipulative act or practice.

(i) The nature of the relief to be granted.

22. No other litigation concerning this controversy has been commenced by or against members of the Class, except that two class actions have been brought in the United States District Court for the Southern District of New York on behalf of the holders of convertible debentures of Indian Head which seek some of the relief sought herein. In one of those actions the plaintiff therein seeks to enjoin the proposed merger between Indian Head and TBH on behalf of holders of Indian Head Common Stock, convertible debentures and Warrants.

23. No particular difficulties are likely to be encountered in the management of this action as a class action.

24. This is the appropriate forum in which to concentrate the litigation of the claims of members of the Class because Indian Head and its pertinent books and records are located within the Southern District of New York and a substantial number of the individual defendants and persons who will be called as witnesses reside or engage in business in the Southern District of New York.

FIRST COUNT

Violation of Sections 10(b) and 14(e) of the Securities Exchange Act of 1934 and Rule 10b-5 of the Securities and Exchange Commission

25. On or about September 27, 1973 there were outstanding 5,427,335 shares of Common Stock and 399,355 Warrants.

26. The Common Stock was on that date and for several years prior thereto listed and traded on the New York Stock Exchange. The Warrants were on that and for several years prior thereto listed and traded on the American Stock Exchange.

27. On or about September 27, 1973, through the use of the mails and other means or instrumentalities of interstate commerce, TBG made an offer to the holders of the Common Stock to purchase a minimum of 750,000 and a maximum of 1,100,000 shares of Common Stock at a price of $27.00 per share ("First Tender Offer").

28. The First Tender Offer was made at a time and on terms determined by non-public information given by Indian Head and its controlling persons to TBG and its controlling persons.

29. Immediately prior to the commencement of the First Tender Offer the Common Stock traded on the New York Stock Exchange at a price of approximately $25.00 per share and the Warrants traded on the American Stock Exchange at a price of approximately $8.00 per Warrant.

30. Prior to the First Tender Offer and in anticipation thereof, on or about September 19, 1973, TBG and Indian Head entered into a Memorandum of Understanding which

provided, among other things, that:

(a) Indian Head would cooperate with TBG in TBG's making a tender offer for Common Stock at $27.00 per share;

(b) TBG reserved the right to reject all tenders if less than 750,000 shares of Common Stock were tendered;

(c) All shares tendered in excess of 1,100,000 shares would be rejected on a pro rata basis;

(d) If TBG purchased at least 750,000 shares of Common Stock from tendering shareholders, Indian Head would sell to TBG and TBG would purchase from Indian Head an additional 750,000 shares of Common Stock at $27.00 per share;

(e) Two nominees of TBG would be elected to the Indian Head Board of Directors, one of whom would become a member of Indian Head's Executive Committee and Finance Committee;

(f) Indian Head would invite one or more observers from TBG to be present at all Indian Head Board of Directors meetings, Executive Committee meetings and Finance Committee meetings, to observe and participate in discussions, but without voting rights.

31. The First Tender Offer contained the following statements of material facts which were made for the purpose of inducing the holders of the Common Stock to tender their shares:

(a) **Page 1:** "Thyssen-Bornemisza Group N.V., a Netherlands Company limited by shares ("TBG"), hereby offers to purchase a minimum of 750,000 shares and a maximum of 1,100,000 shares of Common Stock, $1.00 par value (the "Common Stock"),of Indian Head Inc., a Delaware corporation ("Indian Head"), at $27.00 per share (net to the seller) in cash, upon the terms and conditions set forth in this Offer and in the accompanying Letter of Tender.

(b) "1. Number of Shares. If 750,000 or more shares of Common Stock are tendered, and remain tendered, TBG will purchase all of such shares properly tendered up to 1,100,000 shares of Common Stock, and may extend this Offer. If fewer than 750,000 shares of Common Stock are tendered, and remain tendered, TBG reserves the right, at its option, to elect (a) to extend this Offer from time to time, during which extension all shares of Common Stock previously tendered and not withdrawn will remain subject to this Offer and may be purchased by TBG, (b) to purchase all shares of Common Stock validly tendered pursuant to this Offer and to extend this Offer, or (c) to terminate this Offer and purchase none or all of the shares of Common Stock duly tendered. If more than 1,100,000 shares of Common Stock are tendered, and remain tendered, during the initial period, purchases will be made from all tendering stockholders, pro rata according to the number of shares tendered by each (with appropriate adjustments to avoid the purchase of fractional shares). If this Offer is extended by TBG and TBG purchases shares of Common Stock pursuant to this Offer, TBG may purchase shares tendered during such extension on a first-come, first-served basis.

(c) "9. Purpose of this Offer. TBG intends through the Offer and its agreement with Indian Head referred to below to acquire between 26% and 32% of the issued and outstanding shares of the Common Stock. Indian Head has agreed that immediately upon purchase of shares pursuant to the Offer, two nominees of TBG will be elected to the Indian Head Board of Directors, one of whom will become a member of the Executive Committee and Finance Committee of the Board of Directors of Indian Head. See Item 12.

"TBG does not intend to be involved directly in the day to day business operations and management of Indian Head. On the other hand, TBG does not intend to be merely a passive investor but rather, as a stockholder and through its representation on the Board of Directors and Committees of the Board, it intends to participate and have a significant voice in the formulation of policy and business strategy.

"TBG hopes to facilitate business ventures which Indian Head may wish to undertake by offering to make additional investments in Indian Head or otherwise to participate in such ventures. See Item 12.

"Except to the extent described above, it is not the present intention of TBG to attempt to acquire control of Indian Head by means of these transactions, nor in its capacity as a major stockholder of Indian Head does TBG now have or intend to develop plans or proposals to liquidate Indian Head, to sell its assets or to merge it with any other person or to make any change in its business, management or corporate structure. TBG does intend to vote its shares in a manner which is intended to benefit all of the stockholders of Indian Head, including TBG."

(d) "11. Source and Amount of Funds. The amount of funds to be used in making purchases of the Common Stock pursuant to this Offer (assuming 1,100,000 shares are purchased) is $29,700,000. The estimated costs in connection with the Offer are $1,100,000. In addition, TBG will pay Indian Head $20,250,000 for the purchase of 750,000 shares of Common Stock directly from Indian Head pursuant to the Agreement referred to in Item 12 below. TBG will pay White, Weld & Co. Incorporated ("White, Weld") a fee of $405,000 for its services in arranging said purchase and for other investment banking services. See also Item 14. Of this amount, all of such funds are to be supplied by TBG out of its general funds."

(e) "12. Position of Indian Head Management and Agreements with Respect to Common Stock. On September 19, 1973 Indian Head and TBG entered into a Memorandum of Understanding (the "Agreement") providing that Indian Head would cooperate with TBG in making the Offer. Indian Head has directed the transfer agent for the Common Stock to make available to TBG its stockholder list. However, Indian Head has informed TBG that the Board of Directors and management of Indian Head are not making any recommendation to the stockholders as to whether or not they should tender shares under this Offer. The members of the Board own, together with members of their immediate families, approximately 850,000 shares of Common Stock and have indicated that they intend, at the present time, to tender in the aggregate not more than 50,000 of such shares.

"The parties agreed that if TBG purchases not less than 750,000 shares pursuant to the Offer, Indian Head will sell, and TBG will purchase, 750,000 additional shares from Indian

Head at $27.00 per share. Indian Head also agreed that immediately upon purchase of shares pursuant to this Offer two nominees of TBG will be elected to the Indian Head Board of Directors, one of whom will be a member of the Executive Committee and Finance Committee of the Board of Directors.

"TBG agreed to keep Indian Head informed of any plans for public offerings of its shares or shares of its subsidiaries and affiliates and to give Indian Head an opportunity to consider participation in such offerings, and to give Indian Head a right of first refusal with respect to any business venture or investment that TBG contemplates in the United States and with respect to any subsequent disposition by TBG of its Indian Head shares.

"In addition, it is understood that J. E. Robison, Chairman of the Finance Committee of Indian Head, will be invited to join the Supervisory Board of TBG.

"The Agreement was approved by the Board of Directors of Indian Head on September 25, 1973. The Agreement contemplates, and it is expected, that a supplementary agreement with respect to certain legal matters may be entered into by the parties. It is contemplated that such supplementary agreement will provide that Indian Head will not be obligated to sell shares to TBG if (1) there shall be any pending or expressly threatened action, suit or proceeding before any court or governmental authority relating to the said sale or (2) the purchase of 750,000 shares pursuant to this Offer shall not have taken place before December 1, 1973."

32. The statements in the First Tender Offer were untrue and misleading in that:

(a) TBG intended to acquire control of Indian Head by means of the First Tender Offer, both by itself and as part of a scheme to do so and to thereafter merge Indian Head into a directly or indirectly wholly owned subsidiary of TBG ("wholly owned subsidiary").

(b) The funds requisite to effect the First Tender Offer and the purchase of 750,000 shares

of Common Stock were to be supplied through the mechanism of a sale of the shares acquired by TBG to TBI, which had been incorporated on September 11, 1973, by borrowings from banks, and ultimately by Indian Head.

33. The First Tender Offer omitted to state the following material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading:

(a) The 750,000 shares to be sold by Indian Head to TBG upon consummation of the First Tender Offer had no business purpose but was part of the scheme whereby control of Indian Head would be transferred to TBG.

(b) TBG would be in a position, following the consummation of the First Tender Offer, to exercise control over Indian Head.

(c) TBG intended to acquire greater control of Indian Head through transactions other than the transactions described in the First Tender Offer, to wit, a Second Tender Offer and subsequent merger of Indian Head into a wholly owned subsidiary.

(d) TBG and Indian Head intended the supplementary agreement (hereinafter the "Supplement to the Memorandum of Understanding"), referred to in Item 12 of the First Tender Offer, quoted in paragraph 31, to provide more than the inconsequential matters referred to in Item 12, to wit, (i)

that Indian Head would be committed to register the Common Stock owned by TBG under the Securities Act of 1933 without consideration to Indian Head, and to undertake further obligations with respect thereto, and (ii) that Indian Head would be permitted to participate in investments to be made by TBG, with the result that TBG could acquire greater percentage control of companies in which investments will be made by using a smaller amount of its own funds than if Indian Head did not participate in said investments.

(e) An effect of the First Tender Offer would be the substantial impairment of the value of the Warrant and Common Stock.

(f) TBG intended to impair the value of the Warrants by eliminating the New York Stock Exchange market for the Common Stock.

(g) TBG intended to acquire all shares tendered without regard to the ceiling of 1,100,000 shares stated in its offer.

34. At the time the First Tender Offer was made the defendants knew that it contained statements which were untrue and misleading and omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

35. Pursuant to the First Tender Offer TBG acquired 1,213,619 shares of Common Stock, approximately 113,619

shares, or more than 10%, in excess of the amount it had stated it would purchase.

36. The First Tender Offer and the acquisition by TBG of 1,213,619 shares of Common Stock was one step in a series of fraudulent, deceptive and manipulative transactions intended by the defendants to transfer control of Indian Head to TBG and thereby to defendant H. H. Thyssen-Bornemisza with the intent of wrongfully impairing and eventually destroying the rights of the holders of the Warrants and Common Stock

37. On October 24, 1973 Indian Head issued and sold 750,000 shares of its Common Stock to TBG at a price of $27.00 per share pursuant to the Memorandum of Understanding.

38. The sale of 750,000 shares had no business purpose but was one step in the series of fraudulent, deceptive and manipulative transactions intended by TBG, Indian Head and the individual defendants to transfer control of Indian Head to TBG and thereby to defendant H. H. Thyssen-Bornemisza with the intent of wrongfully impairing and eventually destroying the rights of the holders of the Warrants and Common Stock.

39. In connection with the First Tender Offer, White, Weld acted as dealer-manager for TBG. In addition, White, Weld arranged the sale referred to in paragraph 37. It was wrongfully paid compensation by TBG for both actions.

40. At the time that White, Weld acted as dealer-manager of the First Tender Offer and arranged the sale of 750,000 shares by Indian Head to TBG, defendant L. Emery Katzenbach was a director of Indian Head and a director and Chairman of the Board of White, Weld and defendant R. L.

Genillard was a member of the Supervisory Board of TBG and a director of White, Weld.

41. On or about October 24, 1973, Indian Head and TBG entered into the Supplement to the Memorandum of Understanding.

42. Pursuant to the Supplement to the Memorandum of Understanding, Indian Head agreed, among other things, without consideration to Indian Head, to file registration statements under the Securities Act of 1933 with respect to all shares of Common Stock owned by TBG and to undertake certain other obligations with respect thereto.

43. On or about July 12, 1974, through the use of the mails and other means or instrumentalities of interstate commerce, TBG made an offer, as amended and extended on August 2, 1974, to purchase all outstanding shares of Common Stock at a price of $27.00 per share and all outstanding Warrants at $2.25 per Warrant ("Second Tender Offer").

44. Immediately prior to the commencement of the Second Tender Offer the Common Stock traded on the New York Stock Exchange at a price of approximately $23.00 per share and the Warrants traded on the American Stock Exchange at a price of approximately $4.50 per Warrant.

45. The Second Tender Offer contained the following statement of a material fact which was made for the purpose of inducing the holders of the Common Stock to tender their shares:

"11. Source and Amount of Funds. The amount of funds to be used in making purchases of the Common Stock and Warrants pursuant to this Offer (assuming all outstanding shares of Common Stock not presently owned by TBG and all outstanding Warrants are purchased and assuming no shares of Common Stock resulting from the conversion of the Company's Series A Preferred Stock and Convertible Subordinated Debentures are purchased) is $105,121,777, excluding fees and expenses. In addition, a maximum of approximately $910,000 may be payable to holders of employee stock options pursuant to the offer described in Paragraph 17. Up to a maximum of $50,000,000 of such funds are to be supplied by long term borrowings pursuant to a long term borrowing facility in the form of a 7-year multi-currency revolving credit agreement dated December 19, 1973 with The Chase Manhattan Bank N.A. and fourteen other banks located outside the United States. Under the agreement, borrowings are unsecured and are made at floating interest rates from 3/4 to 7/8 of 1% above the London interbank offered rate quoted in the London Eurocurrency Market. The remaining portion of the required funds will be supplied by TBG out of its general funds, which consist of cash, overdraft facilities and unsecured short term

borrowings used for working capital purposes. TBG expects to continue to make use of these facilities and borrowings for working capital purposes in the future."

46. The aforesaid statement was untrue and misleading in that all the funds to be used by TBG to make the purchases under the Second Tender Offer were to be supplied through the mechanism of a sale of the shares acquired by TBG to TBI, by borrowings from banks, and ultimately by Indian Head.

47. The Second Tender Offer omitted to state the following material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading:

(a) The price at which TBG offered to purchase the Warrants and Common Stock was not based upon a fair assessment of the value thereof, but was fixed arbitrarily by TBG without reference to the fair value thereof.

(b) TBG would partially finance the purchase contemplated by the Second Tender Offer by a transfer of funds from Indian Head to TBI.

(c) TBG intended to impair the value of the Warrants and Common Stock by eliminating the New York Stock Exchange market for the Common Stock and to destroy the value of the Warrants by the merger of Indian Head into a wholly owned subsidiary.

48. At the time of the Second Tender Offer the defendants knew that it contained a statement which was untrue and misleading and omitted to state material facts

necessary to make the statements made, in light of the circumstances under which they were made, not misleading.

49. Pursuant to the Second Tender Offer, TBG purchased 3,552,544 shares of Common Stock and 35,082 Warrants.

50. The Second Tender Offer was a further step in the series of fraudulent, deceptive and manipulative transactions intended by defendants to transfer control of Indian Head to TBG and thereby to defendant H. H. Thyssen-Bornemisza with the intent of wrongfully impairing and eventually destroying the rights of the holders of the Warrants and Common Stock.

51. By reason of TBG's fraudulent acquisition of approximately 90% of the Common Stock, the New York Stock Exchange delisted the Common Stock on or about September 24, 1974; and by reason of the delisting, the value of the Warrants has been substantially impaired.

52. All defendants other than Chemical Bank participated in the acts and practices which constituted fraudulent, deceptive and manipulative acts and practices in contravention of the federal securities laws; each of said defendants knew that the Tender Offers contained untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading and knew that the plan to transfer control of Indian Head to TBG and its wholly-owned subsidiary and thereby to defendant H. H. Thyssen-Bornemisza would impair and eventually destroy the rights of the holders of Warrants and Common Stock.

SECOND COUNT

Merger of Indian Head into TBH; Further Violation of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 of the Securities and Exchange Commission

53. On February 11, 1976 TBI announced the proposed merger of Indian Head into TBH. The announcement was made in a press release, a copy of which is annexed hereto as Exhibit 1 and made a part hereof.

54. The proposed merger will be consummated, if consummated at all, pursuant to a plan ("Merger Plan") whereby TBH will have been formed; TBI will have transferred all its Indian Head Common Stock to TBH in consideration of stock, securities or other property of TBH; holders of Common Stock other than TBI will receive $30.00 cash for each share of Common Stock held by them; and Warrant holders, upon exercise of their Warrants, will receive the property a holder of Common Stock other than TBI would receive on the merger, namely $30.00 cash per Warrant.

55. If the merger is effected, the Warrants will be rendered valueless in that upon exercise at a price of $30.00 per Warrant the holder thereof, will receive only what he paid on exercise, namely $30.00 cash.

56. A claim upon the future assets, earning power and goodwill of Indian Head as represented by a Warrant is of great value and is being arbitrarily stripped from Warrant holders by the defendants.

57. Indian Head and the defendants who directly or indirectly control Indian Head owe a fiduciary duty to the

holders of the Warrants and the other security holders of Indian Head, other than themselves, to not use their controlling position to the detriment of the Warrant holders and other security holders of Indian Head, which duty they will breach unless the merger is enjoined.

58. The proposed merger will be consummated, if consummated at all, pursuant to provisions of state law that permit such consummation without approval of any Indian Head security holders except TBI and without the availability to Warrant holders of appraisal proceedings whereby they may get the fair value of their claim on Indian Head.

59. The merger is without business purpose to Indian Head and its security holders and is designed to and will have the effect of furthering the private intersts of the defendants, or some of them, by permitting TBG, through TBI and TBH, to acquire the benefits of sole ownership of Indian Head at a cost far less than the true value thereof, said payment to be made out of the assets of Indian Head.

60. The merger, if effected, will constitute a fraudulent, deceptive and manipulative act and practice, in which Indian Head and the defendants controlling it will be participants, all in violation of section 10(b) of the Securities Exchange Act and Rule 10b-5 thereunder to the damage of the Class.

THIRD COUNT

Use of Inside Information; Further Violation of Sections 10(b) and 14(e) of the Securities Exchange Act of 1934 and Rule 10b-5 of the Securities and Exchange Commission

61. Following the First Tender Offer and pursuant to the Memorandum of Understanding, TBG caused two of its representatives to be placed on Indian Head's Board of Directors.

62. Following the First Tender Offer and pursuant to the Memorandum of Understanding, Indian Head permitted representatives of TBG to attend meetings of Indian Head's Board of Directors, Executive Committee and Finance Committee as members thereof and as observers and participants.

63. By virtue of the foregoing, TBG had access to information not available to other Indian Head security holders or other persons who might desire to purchase Indian Head Common Stock or Warrants.

64. TBG used such inside information in order to determine whether and when to make the Second Tender Offer and the terms thereof.

65. The use of such information in the Second Tender Offer by TBG and the defendants controlling it constituted a fraudulent, deceptive and manipulative practice in violation of Sections 10(b) and 14(e) of the Securities Exchange Act and Rule 10b-5 thereunder to the damage of the Class.

FOURTH COUNT

Breach of Fiduciary Duties Owed by Defendants to Warrant Holders

66. Plaintiff repeats and realleges the allegations contained in Paragraphs 4 through 65 hereof and alleges that by reason thereof the defendants breached fiduciary duties owed by them to plaintiff and other members of the Class.

67. Defendant Indian Head, aided and abetted by TBG and the other defendants, breached the implied contractual representations made to all Warrant holders that Indian Head would not take any action likely to result in the impairment or destruction of the value of the Warrants.

FIFTH COUNT

Request for Declatory Judgment

68. On or about May 15, 1965 Indian Head and Chemical Bank (then "Chemical Bank New York Trust Company") entered into an agreement dated as of May 15, 1965 entitled "Warrant Agreement", which sought to define the rights of holders of Warrants. A copy of the Warrant Agreement is annexed hereto as Exhibit 2 and made a part hereof.

69. The holders of Warrants are beneficiaries of the Warrant Agreement. The terms thereof are incorporated in the Warrants.

70. The Warrant and Warrant Agreement entitle a holder of a Warrant on the exercise thereof prior to its expiration to a share of Common Stock or, upon certain events, other securities or property.

71. Paragraph 8(e) of the Warrant Agreement provides, in part, as follows:

> "... in case of the consolidation or merger of the Company [Indian Head] with or into any other corporation (other than a consolidation or merger in which the Company is the continuing corporation and which does not result in any change in the Warrant Common Stock), or of the sale of the properties and assets of the Company as, or substantially as an entirety to any other corporation, each Warrant shall after such

capital reorganization, reclassification of capital stock, consolidation, merger or sale entitle the holder to purchase the kind and number of shares of stock or other securities or property of the Company, or of the corporation resulting from such consolidation or surviving such merger or to which such sale shall be made, as the case may be, to which such holder would have been entitled if he had held the Warrant Common Stock issuable upon the exercise of such Warrant immediately prior to such capital reorganization, reclassification of capital stock, consolidation, merger or sale."

72. The announced terms of the proposed merger whereby holders of Warrants will receive, upon the exercise of their Warrants, $30.00 cash constitutes an anticipatory breach of the terms of the Warrants and Warrant Agreement in that the proposed merger is not an event permitting the substitution of $30.00 for a continuing interest in Indian Head because:

(a) A "merger" contemplated by paragraph 8(e) of the Warrant Agreement is not a business combination in which one and the same persons control the merged and continuing corporations, but instead contemplates an arms-length transaction; and

(b) In the proposed merger the "Company" [Indian Head] is the "continuing corporation" as that phrase is used in paragraph 8(e) of the Warrant Agreement.

73. The anticipatory breach of the Warrant and Warrant Agreement has been made or induced by the defendants or some of them.

74. As a consequence of the foregoing, the Warrant holders have suffered and will suffer great damages.

WHEREFORE, plaintiff demands judgment

(a) directing that the defendants cause TBI to divest itself of all of the Common Stock and Warrants acquired by reason of the First Tender Offer, the purchase of 750,000 shares from Indian Head and the Second Tender Offer; said divestiture to be made by way of a public offering;

(b) that the gross proceeds of the public offering which are in excess of the amounts the defendants paid for the Common Stock and Warrants shall be paid to Indian Head and the persons from whom said Common Stock and Warrants were purchased pursuant to the First Tender Offer and the Second Tender Offer, in such manner as the Court shall determine;

(c) declaring that members of the Class who hereafter exercise Warrants shall be entitled to receive with respect to each such Warrant a proportionate share of that type of security and other property, if any, into which one share of Common Stock held by TBI is being changed pursuant to the Merger Plan;

(d) that the plaintiff and the other members of the Class be awarded such damages as the Court shall determine after hearing all proofs with respect thereto;

(e) that the costs and disbursements of this action, including attorneys' and

experts' fees be awarded to plaintiff and the other members of the Class;

(f) that defendants be enjoined from consummating the proposed merger; and

(g) that the Court grant such other and further relief as to it may seem just and proper.

Dated: New York, New York
March 4, 1976

WOLF HALDENSTEIN ADLER
FREEMAN HERZ & FRANK

By: s/Donald M. Landis
A Member of the Firm
Attorneys for Plaintiff
270 Madison Avenue
New York, New York 10016
(212) 689-5300

EXHIBIT 1 - PRESS RELEASE ANNEXED TO FOREGOING AMENDED COMPLAINT

Thyssen-Bornemisza **Press Release** 147sa

Thyssen-Bornemisza Inc.
c/o Indian Head
1211 Avenue of the Americas
New York, New York 10036
Telephone (212) 764-3100

Stuart Pearlman
Director of Communications
Direct Line (212) 764-3195

THYSSEN-BORNEMISZA TO MERGE INDIAN HEAD INTO WHOLLY-OWNED SUBSIDIARY

NEW YORK, Feb. 11 -- Thyssen-Bornemisza Inc. (TBI) announced today that it intends to cause the merger of Indian Head Inc. into a wholly-owned subsidiary of TBI on March 19, 1976 or as soon as practicable thereafter. TBI presently owns approximately 90.6 per cent of the outstanding common stock of Indian Head.

Under the terms of the proposed merger, holders of outstanding Indian Head common stock will receive $30 cash per share.

The plan to merge will have the following effects on other publicly held outstanding Indian Head securities:

-- Indian Head series A preferred stock will be called prior to the merger for redemption at $100 per share plus accrued dividends to the redemption date of March 19 as required by the series A preferred stock provisions.

-- Both issues of outstanding Indian Head subordinated debentures will be assumed by Thyssen-Bornemisza Holdings, Inc., the new subsidiary of TBI. After the merger, the holders of the convertible debentures will no longer have the right to convert to Indian Head common stock but may surrender them and receive an aggregate of $779.22 cash for each $1,000 principal amount of debentures. However, no accrued interest is payable on the convertible debentures if they are surrendered before their March 31, 1976 record date for payment of interest.

BEST COPY AVAILABLE

-- There is no requirement that the convertible debentures be surrendered for cash. They may be held until maturity (1993) and earn the regular interest payments.

-- Under the Warrant Agreement, any holder of a warrant who might choose to exercise his warrant after the merger would receive $30 in cash -- that is, an amount equal to the required $30 exercise price. The $30 is the permanently fixed cash value of an exercised warrant after the merger because the Warrant Agreement provides that a holder will be entitled to purchase only the kind and number of shares of stock or other securities or property to which he would have been entitled if he had held the Indian Head common stock issuable upon exercise of the warrant immediately prior to the merger.

Indian Head securities are traded over-the-counter through the National Association of Securities Dealers, except for the warrants which are traded on the American Stock Exchange.

Thyssen-Bornemisza Inc. is a U.S. subsidiary of Thyssen-Bornemisza N.V., a privately owned industrial holding company.

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EXHIBIT 2 - WARRANT AGREEMENT ANNEXED TO FOREGOING AMENDED COMPLAINT

EXERCISABLE AT ANY TIME PRIOR TO
THE CLOSE OF BUSINESS ON MAY 15, 1990
VOID AFTER MAY 15, 1990

No. For the Purchase of Shares

WARRANT TO PURCHASE COMMON STOCK
of
INDIAN HEAD MILLS, INC.

INDIAN HEAD MILLS, INC., a Massachusetts corporation (hereinafter called the "Company"), for value received, hereby certifies that or registered assigns, is entitled, upon surrender of this Warrant at the principal office of Chemical Bank New York Trust Company, Warrant Agent (or any successor as such Warrant Agent), in the Borough of Manhattan, in The City of New York, at any time prior to the close of business on May 15, 1990, to purchase the number of shares of Common Stock of the Company shown above at the price of $20 per share if exercised before the close of business on May 15, 1970, $25 per share if exercised thereafter and before the close of business on May 15, 1975, $30 per share if exercised thereafter and before the close of business on May 15, 1980, $35 per share if exercised thereafter and before the close of business on May 15, 1985, and $40 per share if exercised thereafter and before the close of business on May 15, 1990, at which date this Warrant expires.

The per share purchase prices shown above and the number of shares issuable upon exercise of this Warrant are subject to adjustment upon the occurrence of certain events, including stock dividends and split-ups, combinations, reorganizations, reclassifications, consolidations, mergers or sales of properties and assets and upon the issuance of certain rights or warrants to holders of Common Stock or the distribution to such holders of assets or indebtedness, as set forth in the Warrant Agreement hereinafter referred to. A complete statement with respect to such adjustments and to other terms and conditions pertaining to the Warrants is contained in the Warrant Agreement, dated as of May 15, 1965, between the Company and the Warrant Agent, a copy of which may be examined by the registered holder hereof at the principal office of the Warrant Agent.

The Company shall not be required upon the exercise of this Warrant to issue fractions of shares, but shall make adjustment in cash for any final fraction on the basis of current market value of any such final fraction (computed as provided in said Warrant Agreement).

Upon the exercise of this Warrant the form of election to purchase on the reverse hereof must be duly executed and the accompanying instructions for the registration and delivery of stock must be filled in.

This Warrant is transferable at the principal office in the Borough of Manhattan, in The City of New York of the Warrant Agent (or of its successor as Warrant Agent) by the registered holder hereof in person or by attorney duly authorized in writing, upon surrender of this Warrant. Upon any such transfer, a new Warrant, or new Warrants of different denominations, representing in the aggregate the right to purchase a like number of shares of the Company's Common Stock will be issued to the transferee in exchange for this Warrant.

Warrants shall be deemed to refer to and include the purchase of such other shares of stock or other securities or property upon such exercise.

6. *Price Periods and Basic Warrant Prices.* Subject to the more detailed provisions of Section 7 and to the adjustments provided therein and in Section 8, the purchase price (the purchase price per share of Warrant Common Stock in effect at any time being hereinafter called the Warrant Price) to be paid per share of Warrant Common Stock upon exercise of a Warrant during the period (i) from May 15, 1965, through the close of business on May 15, 1970, shall be $20 per share, (ii) thereafter through the close of business on May 15, 1975, shall be $25 per share, (iii) thereafter through the close of business on May 15, 1980, shall be $30 per share, (iv) thereafter through the close of business on May 15, 1985, shall be $35 per share, and (v) thereafter through the close of business on May 15, 1990 (at which date the Warrants expire), shall be $40 per share. Each of the foregoing periods is hereinafter called a Price Period; the opening of business on the first day and the close of business on the last day of a Price Period are hereinafter referred to as the beginning of the Price Period and the end of the Price Period, respectively; and the price per share set forth above for each Price Period is hereinafter called the Basic Warrant Price with respect to such period.

7. *Periodic Price Increases.* The Warrant Price in effect at the end of each Price Period shall be increased, effective at the opening of business on the following day, to an increased Warrant Price which bears the same ratio to the Basic Warrant Price for the new Price Period that the Warrant Price in effect at the end of the Price Period then ending bears to the Basic Warrant Price for such Price Period then ending. The increased Warrant Price determined pursuant to this Section 7 shall be computed to the nearest full cent, and the increase which is to take effect at the beginning of any Price Period is hereinafter called the Periodic Increment.

8. *Warrant Adjustments.* The Warrant Price and the number of shares purchasable upon exercise of the Warrant shall be subject to adjustment as follows:

(a) *Stock Dividends, Split-ups.* If after the date hereof the number of outstanding shares of Common Stock is increased by a stock dividend payable in shares of Common Stock or by a split-up of shares of Common Stock, then, on the day following the date fixed for the determination of holders of Common Stock entitled to receive such stock dividend or split-up, the number of shares of Warrant Common Stock issuable on exercise of each Warrant shall be increased in proportion to such increase in outstanding shares of Common Stock and the then applicable Warrant Price shall be correspondingly decreased.

(b) *Combination of Shares.* If after the date hereof the number of outstanding shares of Common Stock is decreased by a combination or reclassification of shares of Common Stock, then, after the effective date of such combination or reclassification, the number of shares issuable on exercise of each Warrant shall be decreased in proportion to such decrease in outstanding shares and the then applicable Warrant Price shall be correspondingly increased.

(c) *Subscription Rights.* If at any time after the date hereof the Company shall issue rights or warrants to all holders of its Common Stock entitling them (for a period expiring within 45 days after the record date mentioned below) to subscribe for or purchase shares of Common Stock at a price per share less than the Current Market Price per share of Common Stock (as defined below) at the record date mentioned below, the Warrant Price shall be decreased to an amount determined by multiplying such Warrant Price by a fraction, the numerator of which is the sum of (x) the total number of shares of Common Stock outstanding immediately prior to the issuance of such rights or warrants multiplied by the Current Market Price on the date of issuance and (y) the aggregate subscription price to be received by the Company for all shares of Common Stock offered for subscription or purchase and the denominator of which is the sum of (x) the total number of shares of Common Stock outstanding immediately prior to the issuance of such rights or warrants multiplied by the Current Market Price on the date of issuance and (y) the aggregate number of shares offered for subscription or purchase

multiplied by the Current Market Price on the date of issuance. The number of shares purchasable upon exercise of the Warrant shall be increased to a number of shares equal to (i) the number of shares purchasable at the date of issuance of such rights or warrants multiplied by the Warrant Price in effect on that date, divided by (ii) the adjusted Warrant Price computed pursuant to the preceding sentence. Such adjustment shall be made whenever such rights or warrants are issued and shall be effective retroactively to immediately after the record date for the determination of stockholders entitled to receive such rights or warrants.

For the purpose of this subsection and subsection (d), the "Current Market Price" per share of Common Stock at any date shall be deemed to be the average of the daily closing prices for the thirty consecutive business days commencing forty-five business days before the day in question. The closing price for each day shall be the last reported sales price regular way or, in case no such reported sale takes place on such day, the average of the reported closing bid and asked prices regular way, in either case on the New York Stock Exchange, or, if the Common Stock is not listed or admitted to trading on such Exchange, on the principal national securities exchange on which the Common Stock is listed or admitted to trading, or if not listed or admitted to trading on any national securities exchange, the average of the closing bid and asked prices as furnished by any New York Stock Exchange firm selected from time to time by the Company for the purpose.

(d) *Distributions.* If at any time after the date hereof the Company shall distribute to all holders of its Common Stock evidences of its indebtedness or assets (excluding cash distributions made as a dividend payable out of earnings or out of surplus legally available for dividends under the laws of the jurisdiction of incorporation of the Company) or rights to subscribe (excluding those referred to in subsection (c) above), then in each such case the Warrant Price shall be decreased to an amount determined by multiplying such Warrant Price by a fraction, the numerator of which is the Current Market Price at such date less the fair market value per share of Common Stock outstanding at the date of distribution (as determined by the Board of Directors of the Company, whose determination shall be conclusive, and described in a statement filed with the Warrant Agent) of the assets or evidences of indebtedness so distributed or of such subscription rights and the denominator of which is the Current Market Price at such date. Such adjustment shall be made whenever any such distribution is made, and shall become effective retroactively to immediately after the record date for the determination of stockholders entitled to receive such distribution.

(e) *Reorganization, Reclassification, etc.* In case of any capital reorganization, or of any reclassification of the capital stock, of the Company (other than a change in par value or from par value to no par value or from no par value to par value or as a result of a subdivision or combination) or in case of the consolidation or merger of the Company with or into any other corporation (other than a consolidation or merger in which the Company is the continuing corporation and which does not result in any change in the Warrant Common Stock), or of the sale of the properties and assets of the Company as, or substantially as, an entirety to any other corporation, each Warrant shall after such capital reorganization, reclassification of capital stock, consolidation, merger or sale entitle the holder to purchase the kind and number of shares of stock or other securities or property of the Company, or of the corporation resulting from such consolidation or surviving such merger or to which such sale shall be made, as the case may be, to which such holder would have been entitled if he had held the Warrant Common Stock issuable upon the exercise of such Warrant immediately prior to such capital reorganization, reclassification of capital stock, consolidation, merger or sale.

(f) *Calculation to Nearest Cent and One-hundredth of Share.* All calculations under this Section 8 shall be made to the nearest cent or to the nearest one-hundredth of a share, as the case may be.

(g) *Notice of Change in Warrant Price.* Whenever the Warrant Price or the Periodic Increment shall be adjusted as in this Section 8 or in Section 7 provided, the Company shall forthwith file with the Warrant Agent a statement, signed by the Chairman of the Board or the President or any Vice President of the Company and by its Treasurer or an Assistant Treasurer or its Clerk or Secretary or an Assistant Clerk or Assistant Secretary, showing in detail the facts requiring such adjustment and the

Warrant Price or Periodic Increment, as the case may be, that will be effective after such adjustment. The Company shall also cause a notice setting forth any such adjustments to be sent by mail, first class, postage prepaid, to each registered holder of Warrants at his address appearing on the Warrant register and at its option may cause a copy of such notice to be published once in an English language newspaper of general circulation in the Borough of Manhattan, The City of New York. The Warrant Agent shall have no duty with respect to any statement filed with it except to keep the same on file and available for inspection by registered holders of Warrants during reasonable business hours. The Warrant Agent shall not at any time be under any duty or responsibility to any holder of a Warrant to determine whether any facts exist which may require any adjustment of the Warrant Price or the Periodic Increment, or with respect to the nature or extent of any adjustment of the Warrant Price or the Periodic Increment when made, or with respect to the method employed in making any such adjustment.

(h) *Other Notices.* In case the Company after the date hereof shall propose to take any action of the type described in subsections (c),(d) and (e) of this Section 8, the Company shall give notice, in the manner set forth in Section 8(g), which notice shall specify, in the case of action of the type specified in subsections (c) and (d), the date on which a record shall be taken with respect to any such action or, in the case of action of the type specified in subsection (e), the date on which such action shall take place and shall also set forth such facts with respect thereto as shall be reasonably necessary to indicate the effect of such action (to the extent such effect may be known at the date of such notice) on the Warrant Price and the number, or kind, or class of shares or other securities or property which shall be purchasable upon exercise of Warrants. Such notice shall be given, in the case of any action of the type specified in subsections (c) and (d), at least ten days prior to the record date with respect thereto and, in the case of any action of the type specified in subsection (e), at least ten days prior to the taking of such proposed action. Failure to give such notice, or any defect therein, shall not affect the legality or validity of any such action.

(i) *No Change in Warrant Terms on Adjustment.* Irrespective of any adjustments in the Warrant Prices or the number of shares of Warrant Common Stock, Warrants theretofore or thereafter issued may continue to express the same prices and numbers of shares as are stated in the similar Warrants issuable initially, or at some subsequent time, pursuant to this Agreement.

(j) *Treasury Shares.* Shares of Common Stock at any time owned by the Company shall not be deemed to be outstanding for the purposes of any computation under this Section 8.

9. *Exercise of Warrants.* (a) Subject to the provisions of this Agreement, each registered holder of Warrants shall have the right, which may be exercised as in such Warrants expressed, to purchase from the Company (and the Company shall issue and sell to such registered holder of Warrants) all or part of the number of fully paid and non-assessable shares of Warrant Common Stock specified in such Warrants (subject to adjustments as herein provided), upon surrender to the Company, at the principal office in the Borough of Manhattan, The City of New York of the Warrant Agent, of such Warrants with the form of election to purchase on the reverse thereof duly filled in and signed, and upon payment to the Warrant Agent for the account of the Company of the Warrant Price for the number of shares of Warrant Common Stock in respect of which such Warrants are then exercised. The date of exercise of any Warrant shall be deemed to be the date of its receipt by the Warrant Agent, duly filled in and signed and accompanied by proper funds as hereafter provided. Payment of such Warrant Price may be made in cash or by certified check or official bank check. No adjustment shall be made for any dividends on any shares of Warrant Common Stock issuable upon exercise of a Warrant. Upon such surrender of Warrants, and payment of the Warrant Price as aforesaid, the Company shall issue and cause to be delivered with all reasonable dispatch to or upon the written order of the registered holder of such Warrants and in such name or names as such registered holder may designate, a certificate or certificates for the number of full shares of Warrant Common Stock so purchased upon the exercise of such Warrants, together with cash, as provided in Section 10 of this Agreement, in respect of any fraction of a share of such stock otherwise issuable upon such surrender. Such certificate or certificates

shall be deemed to have been issued and any person so designated to be named therein shall be deemed to have become a holder of record of such shares as of the date of the surrender of such Warrants and payment of the Warrant Price as aforesaid. The rights of purchase represented by the Warrants shall be exercisable, at the election of the registered holders thereof, either as an entirety or from time to time for part only of the shares specified therein and, in the event that any Warrant is exercised in respect of less than all of the shares specified therein at any time prior to the date of expiration of the Warrants, a new Warrant or Warrants will be issued for the remaining number of shares specified in the Warrant so surrendered, and the Warrant Agent is hereby irrevocably authorized to countersign and to deliver the required new Warrants pursuant to the provisions of this Section and of Section 3 of this Agreement.

10. *Elimination of Fractions.* The Company shall not be required to issue fractional shares of stock upon any exercise of Warrants. As to any final fraction of a share which the same registered holder of one or more Warrants, the rights under which are exercised in the same transaction, would otherwise be entitled to purchase upon such exercise, the Company shall pay a cash adjustment in respect of such final fraction in an amount equal to the same fraction of the last sales price (or bid price if there were no sales) per share on the New York Stock Exchange on the business day which next precedes the day of exercise or, if such stock is not then listed on the New York Stock Exchange, of the market price per share (as determined in a manner prescribed by the Board of Directors of the Company) at the close of business on the business day which next precedes the day of exercise.

11. *Issue Taxes.* The Company will pay all documentary stamp taxes attributable to the initial issuance of shares of Warrant Common Stock upon the exercise of any Warrant; *provided, however,* that the Company shall not be required to pay any tax or taxes which may be payable in respect of any transfer involved in the issue or delivery of any certificates for shares of Warrant Common Stock in a name other than that of the registered holder of Warrants in respect of which such shares are issued.

12. *Reservation of Shares.* The Company shall at all times reserve and keep available out of its authorized but unissued stock, for the purpose of effecting the issuance of stock upon exercise of Warrants, such number of shares of its duly authorized Warrant Common Stock as shall from time to time be sufficient to effect the issuance of shares of Warrant Common Stock upon exercise of all Warrants at the time outstanding.

13. *Merger or Consolidation or Change of Name of Warrant Agent.* Any corporation into which the Warrant Agent may be merged or with which it may be consolidated, or any corporation resulting from any merger or consolidation to which the Warrant Agent shall be a party, or any corporation succeeding to the corporate trust business of the Warrant Agent, shall be the successor of the Warrant Agent hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding. In the case of Warrants which have been countersigned by the Warrant Agent, but not delivered at the time any such successor to the Warrant Agent succeeds to the agency created by this Agreement, any such successor may adopt the countersignature of the original Warrant Agent and deliver such Warrants so countersigned; and in case at that time any of the Warrants shall not have been countersigned, any successor to the Warrant Agent may countersign such Warrants either in the name of the predecessor Warrant Agent or in the name of the successor Warrant Agent; and in all such cases such Warrants shall have the full force and effect provided in the Warrants and in this Agreement.

In case at any time the name of the Warrant Agent shall be changed and at such time any of the Warrants shall have been countersigned but not delivered, the Warrant Agent may adopt the countersignature under its prior name and deliver Warrants so countersigned; and in case at that time any of the Warrants shall not have been countersigned, the Warrant Agent may countersign such Warrants

either in its prior name or in its changed name; and in all such cases such Warrants shall have the full force and effect provided in the Warrants and in this Agreement.

14. *Amendments.* The parties hereto may from time to time supplement or amend this Agreement to cure any ambiguity or to correct or supplement any provision contained in this Agreement which may be defective or inconsistent with any other provision contained herein, or to make such other provisions with respect to any change or any supplemental agreement as the parties may deem necessary or desirable and which shall not be inconsistent with the provisions of the Warrants and which shall not adversely affect the interests of the registered holders of the Warrants.

15. *Mutilated or Missing Warrants.* If any Warrant shall be mutilated, lost, stolen or destroyed the Warrant Agent shall deliver a new Warrant of like tenor and denomination in exchange and substitution therefor upon surrender and cancellation of the mutilated Warrant or, in the case of a lost, stolen or destroyed Warrant, upon receipt of evidence satisfactory to the Warrant Agent of the loss, theft or destruction of such Warrant and, in either case, upon receipt of such indemnity as the Company may reasonably require. Applicants for substitute Warrants shall also comply with such other reasonable regulations and pay such other reasonable charges as the Company may prescribe.

16. *Duties of the Warrant Agent.* The Warrant Agent undertakes the duties and obligations imposed by this Warrant Agreement upon the following terms and conditions, by all of which the Company and the holders of Warrants, by their acceptance thereof shall be bound:

(a) The statements contained herein and in the Warrants shall be taken as statements of the Company, and the Warrant Agent assumes no responsibility for the correctness of any of the same except such as describe the Warrant Agent or action taken or to be taken by it. The Warrant Agent assumes no responsibility with respect to the distribution of the Warrants except as herein otherwise provided.

(b) The Warrant Agent shall not be responsible for any failure of the Company to comply with any of the covenants contained in this Agreement or in the Warrants to be complied with by the Company.

(c) The Warrant Agent may execute and exercise any of the rights or powers hereby vested in it or perform any duty hereunder either itself or by or through its attorneys, agents or employees, and the Warrant Agent shall not be answerable or accountable for any act, default, neglect or misconduct of any such attorneys, agents or employees or for any loss to the Company resulting from such neglect or misconduct, provided reasonable care had been exercised in the selection and continued employment thereof.

(d) The Warrant Agent may consult at any time with counsel satisfactory to it (who may be counsel for the Company) and the Warrant Agent shall incur no liability or responsibility to the Company or to any holder of any Warrant in respect of any action taken, suffered or omitted by it hereunder in good faith and in accordance with the opinion or the advice of such counsel, provided the Warrant Agent shall have exercised reasonable care in the selection and continued employment of such counsel.

(e) The Warrant Agent shall incur no liability or responsibility to the Company or to any holder of a Warrant for any action taken in reliance on any notice, resolution, waiver, consent, order, certificate, or other paper, document or instrument believed by it to be genuine and to have been signed, sent or presented by the proper party or parties.

(f) The Company agrees to pay to the Warrant Agent compensation for all services rendered by the Warrant Agent in the execution of this Warrant Agreement, to reimburse the Warrant Agent for all expenses, taxes and governmental charges and other charges of any kind and nature incurred by the Warrant Agent in the execution of this Warrant Agreement and to indemnify the

Warrant Agent and save it harmless against any and all liabilities, including judgments, costs and counsel fees, for anything done or omitted by the Warrant Agent in the execution of this Warrant Agreement except as a result of the Warrant Agent's negligence or bad faith.

(g) The Warrant Agent shall be under no obligation to institute any action, suit or legal proceeding or to take any other action likely to involve expense unless the Company or one or more holders of Warrants shall furnish the Warrant Agent with reasonable security and indemnity for any costs and expenses which may be incurred, but this provision shall not affect the power of the Warrant Agent to take such action as the Warrant Agent may consider proper, whether with or without any such security or indemnity.

(h) The Warrant Agent and any stockholder, director, officer or employee of the Warrant Agent may buy, sell or deal in any of the Warrants or other securities of the Company or become pecuniarily interested in any transaction in which the Company may be interested, or contract with or lend money to the Company or otherwise act as fully and freely as though it were not Warrant Agent under this Warrant Agreement. Nothing herein shall preclude the Warrant Agent from acting in any other capacity for the Company or for any other legal entity.

(i) The Warrant Agent shall act hereunder solely as agent and in a ministerial capacity, and its duties shall be determined solely by the provisions hereof. The Warrant Agent shall not be liable for anything which it may do or refrain from doing in connection with this Agreement except for its own gross negligence or bad faith.

(j) The Warrant Agent may resign at any time upon not less than 30 days' prior written notice to the Company. The Company may appoint as successor Warrant Agent any bank or trust company having its principal office in the Borough of Manhattan, City and State of New York.

IN WITNESS WHEREOF, the parties hereto have caused this Warrant Agreement to be executed and delivered as of the day and year first above written.

INDIAN HEAD MILLS, INC.

By JAMES J. GAVIN, JR.
Vice President

Attest:

[CORPORATE SEAL]

LAWRENCE H. HALVERSON
Assistant Clerk

CHEMICAL BANK NEW YORK TRUST COMPANY

By A. W. DOYLE
Corporate Trust Officer

Attest:

[CORPORATE SEAL]

H. OPPENHEIM
Assistant Secretary

[CONFORMED COPY]

INDIAN HEAD MILLS, INC.

156sa

WARRANT AGREEMENT dated as of May 15, 1963, between INDIAN HEAD MILLS, INC., a Massachusetts corporation, and CHEMICAL BANK NEW YORK TRUST COMPANY, a New York corporation.

Indian Head Mills, Inc. (hereinafter called the "Company") proposes to issue stock purchase warrants (hereinafter called the "Warrants") entitling the holders thereof initially to purchase an aggregate of 400,000 shares of the Company's Common Stock for sale in conjunction with $20,000,000 aggregate principal amount of 5½% Subordinated Debentures due May 15, 1990 (hereinafter called the "Debentures"), of the Company. Chemical Bank New York Trust Company (hereinafter called the "Warrant Agent"), at the request of the Company, has agreed to act as the agent of the Company in connection with the issuance, registration, transfer, exchange and exercise of Warrants.

NOW, THEREFORE, in consideration of the premises and the mutual agreements herein set forth, the parties hereto agree as follows:

1. *Appointment of Warrant Agent.* The Company hereby appoints the Warrant Agent to act as agent for the Company in accordance with the instructions hereinafter in this Agreement set forth, and the Warrant Agent hereby accepts such appointment.

2. *Form of Warrant.* Each Warrant shall be in substantially the form of Exhibit A hereto, shall be signed by, or bear the facsimile signature of, the President or a Vice President of the Company and shall bear a facsimile of the Company's seal. In case any officer whose signature or facsimile signature has been placed upon any Warrant shall have ceased to be such before such Warrant is issued, it may be issued with the same effect as if such officer had not ceased to be such at the date of issue. The Warrants initially issued shall represent an aggregate of 20 shares for each $1 000 principal amount of Debentures to which such Warrant is attached and shall be dated May 15, 1963.

3. *Countersignature and Registration.* The Warrant Agent shall maintain books for the transfer and registration of Warrants. No Warrant shall be valid for any purpose unless countersigned by the Warrant Agent. The Warrant Agent shall countersign a Warrant only (a) upon initial issuance of the Warrants in accordance with the instructions of an officer of the Company or (b) upon exchange or substitution for one or more previously countersigned Warrants, as hereinafter provided.

4. *Transfers and Exchanges.* The Warrant Agent shall transfer, from time to time, any outstanding Warrants upon the books to be maintained by the Warrant Agent for that purpose, upon surrender thereof for transfer properly endorsed or accompanied by appropriate instructions for transfer. Upon any such transfer, a new Warrant shall be issued to the transferee and the surrendered Warrant shall be canceled by the Warrant Agent. Warrants may be exchanged at the option of the holder thereof upon surrender at the principal office in the Borough of Manhattan, The City of New York of the Warrant Agent for another Warrant, or other Warrants of different denominations, representing in the aggregate the right to purchase a like number of shares of Common Stock.

5. *Common Stock and Warrant Common Stock.* As hereinafter used in this Agreement, Common Stock shall mean stock of the Company of any class, whether now or hereafter authorized, which has the right to participate in the distribution of either earnings or assets of the Company without limit as to amount or percentage, and Warrant Common Stock (which term shall include the Common Stock issuable upon exercise of Warrants) shall mean only Common Stock, $1 par value, as authorized at the date hereof and stock of any other class into which such presently authorized Common Stock may hereafter be changed. In case by reason of the operation of Section 8(c) the Warrants shall entitle the registered holders thereof to purchase any other shares of stock or other securities or property of the Company or of any other corporation, any reference in this Agreement to the exercise of

This Warrant and similar Warrants when surrendered at the principal office in the Borough of Manhattan, in The City of New York of the Warrant Agent (or of its successor as Warrant Agent) by the registered holder hereof in person or by attorney duly authorized in writing may be exchanged for another Warrant, or other Warrants of different denominations, and representing in the aggregate the right to purchase a like number of shares of the Company's Common Stock.

INDIAN HEAD MILLS, INC.

By

President

This Warrant is not valid until countersigned by the Warrant Agent.

Dated:

Countersigned:

CHEMICAL BANK NEW YORK TRUST COMPANY,
as Warrant Agent.

By

Authorized Signature

158sa

(Reverse of Warrant)

ELECTION TO PURCHASE

To INDIAN HEAD MILLS, INC.

The undersigned hereby irrevocably elects to exercise the right of purchase represented by the within Warrant for, and to purchase thereunder, ... shares of the stock provided for therein, and tenders herewith payment of the purchase price in full.

Please issue a Certificate or Certificates for such shares in the name of

Insert Social Security or Other Identifying Number

.....
(Please print name and address)

.....

.....

AND, if said number of shares shall not be all the shares purchasable thereunder, a new Warrant is to be issued for the balance remaining of the shares purchasable under the within Warrant, in the name of the undersigned.

Please deliver said Certificate(s) and Warrant, if any,

(Check one) ☐ against receipt ☐ by mail to the aforesaid address.

Dated:.....

Signature ....

Name .....
(Please print name and address)

Address .....

.....

NOTE: The above signature should correspond exactly with the name on the face of this Warrant or with the name of assignee appearing in assignment form below.

ASSIGNMENT

For value received .....
hereby sell, assign and transfer unto .....
.....
the within Warrant, together with all right, title and interest therein, and do hereby irrevocably constitute and appoint .....
.....
attorney, to transfer said Warrant on the books of the within-named Company, with full power of substitution in the premises.

Dated: ....., 19....

.....

NOTE: The above signature should correspond exactly with the name on the face of this Warrant.

CERTIFICATE OF SERVICE

76-7578
Re: Brucker v. Thyssen-Bornemisza Europe, etal

STATE OF NEW JERSEY :
: ss.:
COUNTY OF MIDDLESEX :

I, Muriel Mayer, being duly sworn according to law, and being over the age of 21 upon my oath depose and say that: I am retained by the attorney for the above named Appellants.

That on the 14th day of February, 1977, I served the within

Supplemental Appendix

in the matter of Brucker v. Thyssen-Bornemisza Europe, N.V., etal

upon (see Attached list)

by depositing two (2) true copies of the same securely enclosed in a post-paid wrapper, in an official depository maintained by the United States Government.

Muriel Mayer

Sworn to and subscribed
before me this 14th day
of February 1977.

Lorraine Scalla
A Notary Public of the
State of New Jersey.

LORRAINE SCALLA
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires April 13, 1977

Brucker v. Thyssen-Bornemisza Europe, etal

Austrian, Lance & Stewart, P.C.
630 Fifth Avenue
New York, New York 10020

Shearman & Sterling, Esqs.
53 Wall Street
New York, New York 10005

Richard J. Cutler, Esq.
1211 Avenue of the Americas
New York, New York 10036

Cravath, Swaine & Moore, Esqs.
One Chase Manhattan Plaza
New York, New York 10005

Weinstein & Levinson, Esqs.
11 Park Place
New York, New York 10007

Wolf, Haldenstein, Adler, Freeman
Herz & Frank, Esqs.
270 Madison Avenue
New York, New York 10016